

A COMPARATIVE STUDY OF THE  
POLITICAL PHILOSOPHIES OF  
THOMAS HOBBS AND JEAN-JACQUES ROUSSEAU.

by  
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## INTRODUCTION.

The perennial problem of political philosophy is the relation of the individual to society. Society may be defined as the most general term referring to the whole complex of the relations of man to his fellows. This problem may then be restated as the relation of the individual to the state when the latter is regarded as an agency for social control having as its object the regulation of the external relationships of man in society.

Throughout the history of political thought there have always been two conceptions of government and law: a descending and an ascending conception, to borrow the terminology of Walter Ullmann.<sup>1)</sup> According to the first conception all authority is derived by the ruler from a source above and outside the people that makes up the body politic. Theocratic kingship is an example of this conception. According to the ascending conception of government and law all authority resides in the people and the ruler derives his authority from the consent of the people and is responsible to them for his actions.

The political philosophy of Thomas Hobbes is a good example of the descending conception of government. According to him human society can only be maintained in an orderly fashion by an all-powerful and absolute authority, preferably a despotic monarch who stands outside and above the body politic. The ascending conception, on the other hand, found eloquent expression in the doctrine of Jean-Jacques Rousseau who located the supreme authority in the people as a whole, conceived as a corporate body with a will of its own.

Some/.....2

1) Principles of government and politics in the Middle Ages.  
London, Methuen, (1961) p.20.

Some of the most characteristic differences between these two schools of thought may best be sketched by examining their respective attitudes to certain important questions. The first of these is the attitude to the nature of man. We see at once that Hobbes and his school regard man as an atomistic individual who is in constant strife with his fellow-men and who has to be forced by a superior authority to maintain peace and order. Although Rousseau does not deny that man has egoistic tendencies, he also recognizes that man has a capacity for compassion towards his fellow-men. According to him men are thus able to form a community and to govern themselves without the restraining power of an absolute despot. Man can indeed only realize all his potentialities as a member of an orderly community. This school of thought, in opposition to that of Hobbes, does not believe in an inevitable antithesis between individual man and the state.

The other important question is that of method. Hobbes lived at a time when the philosophers thought that the new scientific view of life, and consequently the mathematical method, would be able to solve all our problems. Hobbes did therefore not hesitate to apply the mathematical method to his study of human relations. The result was an atomistic conception of the individual and a treatment of politics in a purely mechanistic and materialistic fashion. Rousseau, on the other hand, realized that the methods of the natural sciences were not applicable to human affairs, because man was not a mechanical unit, but a creature of flesh and blood with its own will and passions. He also realized that the needs of man can only be satisfied in a community.

To place these developments in their proper historical perspective, we shall very briefly show how the late medieval political thought entertained no essential antithesis between individual and community but subjected

everybody to a universal law which the Christians identified with the will of God.

After the breakdown of the feudal system, a multitude of corporations sprang up, all of which were more or less autonomous and were able to safeguard their members against arbitrary violation of rights by the territorial prince. This was mainly the position which Calvin and his followers wished to maintain. The stand they took on the notion of contract, sovereignty of law and the recognition of the people as a corporate body and the subject of rights is stated adequately in the Vindiciae contra tyrannos.

After the discoveries of Kepler, Copernicus and Galileo and the growth of the natural sciences, the theocratic tradition of the Middle Ages was undermined. The rights of the various corporations were gradually usurped by the emergent centralized nation-state. It was at this stage that Hobbes made his appearance and based his political theory on the assumption that the individual stood isolated against the power of the whole commonwealth concentrated in the person of the sovereign monarch. Hobbes, however, did not arise out of a vacuum. He had his precursors and in this respect the doctrines of Bodin and Le Bret deserve our attention.

A more detailed discussion of the political doctrines of Hobbes and Rousseau brings us to the conclusion that the latter's position constitutes in many respects a definite return to the political thought of the late Middle Ages via Plato. It also appears that the influence of Althusius on Rousseau may have formed an effective bridge between his position and that of the sixteenth century.

Because of the logical consistency of his thought and the lucidity with which he expressed his doctrine,

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there does not exist much controversy about the teaching of Hobbes. Rousseau, on the other hand, is one of the most controversial figures in the history of political thought and consequently we were obliged to devote much more attention to him than to Hobbes in order to clear the ground of many of the misinterpretations of his doctrine that accumulated over the years.

On the whole, however, serious scholarship agrees with the interpretations of philosophers with the standing of Bosanquet and Ernst Cassirer. Both of them recognized the ethical function which Rousseau assigned to the state: to form the citizen in such a way that he will not only live for his own interests, but for the interests of the community of which he is a member. To achieve such a state of affairs the recognition of the sovereignty of law - a law to which all members of the community freely submit - was required. To the idea of the power state, Rousseau opposed the idea of the constitutional state, for his sovereign law cannot be arbitrary or capricious, but it is a law which the individual himself recognizes as valid and necessary, and to which he therefore assents for its own sake as well as for his own.

Philosophical anthropology did not receive much attention from philosophers up to the second half of the 19th century. It was only towards the end of the 19th and the first half of the 20th century that people like Feuerbach, Scheler, Heidegger and Buber paid special attention to this aspect of philosophy. Buber gives an excellent survey of developments in this field<sup>and</sup> by comparing his observations with the ideas of Rousseau we were able to show that Rousseau's political doctrine is in accordance with the contemporary view of the true nature of man.

In conclusion we were able to point out that in both totalitarian and Western states of our time, the atomistic individualism initiated by Hobbes, is still responsible for creating circumstances which cause the individual to feel isolated and abandoned to the full power of the centralized state. In our age with its craze for planning, the temptation to regard men as things that can be dealt with in the same way as all other things, is not always successfully withstood. In other words, there is still a strong tendency to apply the methods of the natural sciences to the behaviour of human beings as Hobbes did. This tendency is a characteristic of modern absolutism and totalitarianism. To our mind, the average man can only regain confidence and a feeling of really belonging to the body politic if small, autonomous corporations are allowed to develop within each of the large nation-states of our day. If we regard the human being as a free and reasonable agent who is able to exercise a power of choice, it is only natural that he should be allowed to exercise this power in a responsible way. In such a small community or corporation the individual will feel himself at home and he will be able to partake effectively in its activities. This is the message of Rousseau for the time in which we live.



## CHAPTER 1.

### A SHORT HISTORICAL BACKGROUND.

To see the political doctrines of Hobbes and Rousseau in their proper historical perspective, one has to go back to Greek philosophy. It was Socrates who convinced Plato that philosophy had to begin with the problem of man. Plato, however, soon realized that we cannot find an adequate definition of man so long as we confine ourselves within the limits of man's individual life. The nature of man only becomes clear and intelligible if we consider man's political and social life. In this way Plato changed the whole problem of man: he declared politics to be the clue to human psychology.

X The soul of the individual is bound up with the social nature, we cannot separate the one from the other. If public life is wicked and corrupt, private life cannot develop and cannot reach its end. This point is very important, because, as we shall see later, this was exactly the view to be advocated by Rousseau. If we want to change the ethical life of man, we must first find the right political order. In order to achieve this, the first step to be taken in Plato's time, was to replace the mythical gods by what Plato described as the highest knowledge: the "Idea of the Good." If this idea is the essence and the very core of divine nature, the conception that God is the author of evil becomes absurd. According to Plato, the state has no other and no higher aim than to be the administrator of justice. In Plato's language, however, justice is the general principle of order, regularity, unity and lawfulness. With this conception we may say that Plato became the founder and the first defender of the idea of the Legal State. This, in theory, was also one of the most outstanding achievements of Rousseau.

What Plato is asking for in his "Republic" is not the best, but the ideal state. It is one of the first principles of Plato's theory of knowledge to insist upon the radical distinction between empirical and ideal truth.

In mythical thought man is possessed by a good or evil demon; in Plato man chooses his demon. Man ceases being in the iron grip of a superhuman force. He is a free agent who has to take full responsibility. Not only the individual, but also the state has to choose its demon. Only by choosing a good demon can a state secure its real happiness.

Whereas in Plato's theory man had to choose the long way to attain the idea of the good and to understand its nature: the way that leads from arithmetic to geometry, from geometry to astronomy, harmonics, and dialectic; Augustine rejects this circuitous way. According to him all learning and philosophical speculation is null and void in so far as it does not lead us to the knowledge of God.

The Greek conception of an eternal and impersonal law was unacceptable and incomprehensible to the Christian thinkers of the Middle Ages. It is by rational thought that we are to find the standards of moral conduct and it is reason, and reason alone that can give them their authority. In contrast with this Greek intellectualism, prophetic religion is characterized by its deep and resolute voluntarism. God is a person and that means a will. No mere logical methods of arguing can make us understand this will. God must reveal himself, he must make known his commandments. From God himself man has to learn good and evil, not from dialectic.

Thus the real difference between Greek and

Jewish.....8

Jewish religious thought is that according to the former, the ethical law is not given or proclaimed by a superhuman being, but that we have to find and to prove it ourselves by rational and dialectic thought. This was the conflict between reason and faith that broke out time and again during the Middle Ages.

Yet, in accordance with the doctrine of Plato, the thesis that the first and principal task of the state is the maintenance of justice, became the very focus of medieval political theory. There was, however, a difference which entails the most important practical consequences. The Middle Ages could not conceive of any abstract, impersonal justice. In monotheistic religion the law must always be traced back to a personal source. Without a law-giver there can be no law. Law is the will of God. There was still another aspect in which medieval thought deviated from Plato and Aristotle. According to Plato, justice is not the same as equality of rights. Aristotle speaks of born slaves and alleges that there are a great many men who are incapable of ruling themselves. To this Platonic and Aristotelian ideal of justice the Stoic philosophers added an entirely new conception: the conception of the fundamental equality of man before God. This conception became one of the cardinal points of the medieval theory. The Stoic conception that all men are free because they are all endowed with the same reason, found its theological interpretation and justification in the added dictum that this very reason is the image of God. From this premise it follows that the authority of no political power can ever be absolute. It is always bound to the laws of justice. Even the principle of the divine right of kings was always subject to certain fundamental limitations.....9

limitations. The sovereign is not under any external compulsion to obey the laws; but the power and authority of the natural law remain unbroken.

1)  
Walter Ullmann described lucidly the dual character of medieval kingship. As theocratic king, the king derived his authority from God<sup>to</sup>/whom alone he was responsible for his regime. In his capacity as feudal overlord, however, he had to proceed by consultation and agreement with the other parties in the feudal contract. This feudal aspect of medieval kingship eventually led numerous writers to speak indiscriminately of a pactum between the king and his peoples. It was here that the well-known notion of contract originated.

Before describing the status and nature of popular associations or corporations in the Middle Ages, the remarkable opinions of the Postglossator Bartolus<sup>2)</sup> (1314-1357) deserve our attention. Trying to provide a justification of some North Italian cities which enacted their own laws without any reference to a pope or an emperor, Bartolus worked out the doctrine of the people's legislative sovereignty. According to him, no king or pope had any say in the people's own usages and customs, but once this element of the consent of the people was realized, the next step suggested itself: if the citizens can by tacit consent create unwritten law, why can they not exercise the same law-creating ability in the shape of the written law? By demonstrating the free people as the ultimate bearer of legislative competency, Bartolus has indeed no difficulty in establishing the people as the sovereign. There was no room left for a superior, for a sovereign, standing outside and above the people. He also realized that his system

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1) Principles of government and politics in the Middle Ages. London, Methuen, 1961. Chapter 3.

2) Ullmann: Op.cit. pp.282-287.

of practical democracy is only feasible in confined communities. The clergy, however, are not bound by the laws of the laymen.

Except for this last provision, Bartolus' doctrine contains two concepts which will recur in the doctrine of Rousseau, namely the people's legislative sovereignty and the feasibility of real democracy only in small communities.

From this brief survey of the historical background of political thought, it is clear that the absolute and unlimited power which Hobbes claims for his sovereign is an unhistorical and revolutionary notion. Similarly, his notion of the individual as an atomistic unit which is always in a state of war with other individuals, and from which he deduces the necessity of an absolute coercive power, is totally foreign to the history of political thought. We never find the individual on his own, but always as a member of a community or people which is the real subject of rights.

We shall see that it is Rousseau who maintains historical continuity in his political doctrine. Like the Greek philosophers, he believes that man is able by virtue of his rational powers to recognize a moral law to which he will submit himself voluntarily for his own, as well as for the community's, good. He acknowledges the people as a corporate body and as the subject of rights and the creator of its own law. Individuals only exercise their rights as members of the corporate body which is the people. There is thus not the eternal strife between individuals which necessitates an absolute and unlimited coercive power as envisaged by Hobbes.

CHAPTER 2.

CORPORATIONS IN THE LATE MIDDLE AGES.

Since the fourteenth century the clergy and the Pope had been suffering loss of prestige and of moral authority. The Church was increasingly menaced by the growth of nationalist sentiment and organization. With the advent of the Reformation in the sixteenth century, one country after another and city after city, established its local control of the Church and absorbed much of its property and jurisdiction. Out of the anarchy that prevailed at that time, the monarchs of both England and France made strenuous efforts effectively to centralize government.

It is this drive for centralization and absolutism that found its ultimate culmination in the massacre of St. Bartholomew's night in 1572. The meaning of this event was that the French king was now claiming absolute power over all things, including religious belief and practice, within his realm. This development constitutes such a distinct break with the prevailing system of corporate bodies which had arisen in the Middle Ages, that it will be necessary to have a good look at political conditions in the late Middle Ages in order to appreciate the revolutionary character of this change.

The late Middle Ages were characterized by a great variety of corporations: village communities, guilds, towns and cities. These unions are the natural answer to the human urge to act within a group, so as to be more articulate and to give to individual views a greater margin of deployment.

1)

Francois Hotoman tells us that already in the early.....12

1) Franco-Gallia. London, Longmans, 1938. pp. 1-2.

early Middle Ages the Franks and the Gauls did not form one common people under the jurisdiction of one single sovereign. Various cities and communities had their own governments or parliaments. Each year on the 1st of May a public council of the all the peoples was held on which the most important matters were discussed with the general permission and consultation of all the estates.

2)

According to Lagarde the corporations came into their own upon the decline of the feudal regime. At that time two services, namely the administration of justice and military service passed increasingly from the landlords into the hands of the emergent cities and guilds.

3)

What were these corporations in reality? Coornaert defines a corporation as "un groupement économique de droit publique; soumettant ses membres à une discipline collective pour l'exercice de leur profession". Clearly implicit in this definition is the contractual relationship between the individual and the group. Only by submitting to the discipline and rules of his particular corporation does the individual member obtain the right to exercise his trade or profession. In this way there existed corporations of traders, industrial workers, agricultural workers, etc. According to Lousse a corporation "naît de l'union, de l'ordonnance, raisonnée, volontaire et durable de plusieurs personnes inférieures à elle, en vue d'un but unique<sup>auquel</sup>/chacun de ses personnes ne pourrait tendre si elle était laissée à ses propres moyens." 4)

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- 2) La structure politique et sociale de l'Europe aux xive siècle. p.98.
- 3) Qu'est-ce qu'une corporation dans l'ancienne France? (In Université de Louvain. Recueil de travaux: L'organisation corporative du Moyen Age à la fin de l'Ancien Regime. p.9.)
- 4) La société d'ancien régime. p.132.

A great variety of such corporations existed in the Middle Ages. There were guilds of craftsmen such as carpenters and tailors; merchant guilds; ecclesiastic corporations such as convents, chapters, charitable establishments and universities; cities, some of which were entirely free; and rural agricultural workers.

Apart from their outward variety, the corporations differed considerably as regards their internal structure and authority. There were simple corporations only comprising the labourers in one single industry such as the textile industry, while the complex corporations comprised workers in more than one industry. As far as their authority was concerned, there were also two main classes, i.e. corporations which recognized no higher authority and those which recognized the authority of a prince. Over and above all these corporations there were still the estates each of which contained various corporations and individuals, namely the clergy, the nobility, the bourgeoisie and the peasant farmers.

All corporations enjoyed a great measure of internal autonomy, even the corporations "superiorem recognoscentes". In respect of their members they all had the power of police and the administration of justice, as well as of legislation, military command in case of danger, and taxation.

5)  
According to Pothier they could legislate on all these subjects and their members were required to obey such laws, on condition that these laws did not conflict with the general laws of the country, the civil liberty or the interest of third parties. As far as the domestic affairs of a corporation were concerned, the corporation was entitled to act according

to its..... 14

5) Traité des personnes et des choses. (Quoted by Lousse, op.cit. p. 166)



to its own discretion. Domestic affairs included such things as conditions of admission, and rights and duties of members.

Those corporations which recognized a prince, usually concluded a contract with the prince to get their rights and privileges acknowledged by him in the form of a written charter. Such charter reaffirmed all the powers mentioned above and granted the permission of the prince to the implementation thereof. Sometimes the prince himself took the initiative to acknowledge the powers of a corporation, especially when he desired any aid of such a corporation.

The relation of the corporation to the prince had much in common with that of a feudal vassal with this important difference, however, that whereas the relation between landlord and vassal was a relation between two physical persons, that between the corporation and the prince was a relation between a *persona moralis* and a physical person.

It was expected of the corporation to render military and financial aid to the prince and also to be willing to partake in consultations. The prince never addressed requests for military and financial aid to the individuals, but only to the corporations and it was their duty to obtain such aid from their individual members.

On the other hand the prince had the duties of loyalty to his oath and charter and of safeguarding the peace, safety and interests of the corporations.

It is important to understand clearly what position the individual member occupied in the corporation. Lousse sums up the position as follows: "Elle (the corporation) prive l'individu d'une partie de son indépendence; elle l'assujettit au corps qui le domine..... 15

domine. Mais loin de le laisser absorber par lui, de laisser dissoudre sa personnalité, elle lui confère une qualité qu'il ne possédait pas encore..."<sup>6)</sup> The individual, on joining a corporation, did loose a part of his independence but he was never totally absorbed by the corporation; on the contrary, membership endowed him with a status he did not have before. This is also the position of the individual in Rousseau's body politic as we shall see later.

Lousse also points out that the individuals at that time regarded the corporations only "comme des moyens utiles à réaliser, d'accord avec ses semblables, certaines fins secondaires, en harmonie avec son but final: développer ses facultés, réaliser un équilibre tranquille, pratiquer la vertu, accumuler les chances de salut."<sup>7)</sup>

In other words, the individual members thought that the corporations afforded them with useful means to develop their potentialities and to work towards their salvation. This idea recurs in Rousseau's writings.

On the other hand, the opportunity to associate oneself with one's equals, means that the individual is not isolated and abandoned entirely to himself. It gives him solidarity with his fellow-workers for the defence<sup>8)</sup> of his rights.

Within in each corporation a strict hierarchy was maintained. The guilds, for instance, had four categories of members: supporters, apprentices, associates and masters. Similar grades were to be found among the nobility, the clergy and in the universities. The place and status of a member in the hierarchy of his corporation depended on his knowledge of, and proficiency in, his profession. Only those members who were recognized as masters.....16

6) Op. cit., p.162.

7) Op. cit., p.193.

8) Op. cit., p.244.

masters of their profession enjoyed all the rights and privileges and could air their views in the general councils held from time to time. The corporation, however, protected the interests of its members against third parties and guaranteed members the free disposal of their possessions and person. Members could come and go freely wherever they liked and were even free to move to the jurisdiction of another landlord. They had free access to the prince and they could petition him or appear in person before his court. All of them had the right to be judged by their peers.

This wide variety of members did not, however, militate against the unity of the corporation. Each corporation, just like a landlord, had a name, a patron, a seat, a belfry and bells, archives and treasury, a flag and banner with its own design, a costume, a rank and a seal. Each had its own patrimony with which it could deal as it thought fit. It could act as a legal person both in private and civil capacity. It was provided with special organs of legislation, representation and execution. In short, it had all the characteristics and rights of a persona moralis.

It enjoyed legislative power in respect of all the persons which were under its jurisdiction. Its members had to obey its rules so that peace could prevail. In order to preserve internal peace, it could exercise police functions, it could control the admission of foreigners and expel undesirable persons. It could decide on war and peace and it saw to it that taxes were levied in an equitable manner and actually collected the taxes on behalf of the prince. It could mint its own currency, organize labour, develop the trade, organize welfare services, assume responsibility for public health, education, culture and recreation. It could do everything

that.....17

that a landlord could do at that time and a great deal more.

In its private legal capacity the corporation enjoyed the same rights as an individual: it could possess property, could sign contracts, inherit, plead, and claim.

All corporations had the same type of internal organisation consisting of representative and executive organs. The representative organ consisted of individuals or a college which could take decisions on behalf of the corporation. There were at least three such bodies, a general assembly convened on special occasions, a smaller council whose duty it was to expedite current matters and one or more chiefs or presidents.

The executive organ only consisted of subordinate functionaries who received their orders from the above-mentioned bodies and to whom they were responsible. They had no political character at all and were only administrative officials.

In the case of corporations "*superiorem non recogniscentes*", the general assembly had "*vraiment la plénitude de la potestas*." <sup>9)</sup> The decisions of other corporations were liable to annulment by superior authorities, but against these they defended both their corporate and individual liberties. Their competence had theoretically no other limits than the sphere of activity of the corporation.

The majority of the corporations had a council whom they themselves appointed. Its members had to promise to abide by the constitution like an ordinary member and not to exceed the powers entrusted to them. They had to govern the corporation during a fixed period or for life and had to ensure that the laws were enforced.

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9) Lousse: Op. cit., p.223.

The chief or chairman of the council had to preside at meetings, carry out resolutions, supervise subordinate officials, inform and guide the members.

At the meetings of the general assembly the majority vote required depended on the importance of the matters to be decided. As far as serious questions were concerned, especially those affecting the unwritten rights of members, real unanimity was required.

The corporation as an orderly community created its own laws and in this respect old traditions and customs formed the basis. Those corporations which recognized the authority of a ruler, negotiated with him to obtain official recognition of their privileges and liberties. The ruler could never force the corporations to obey his commands unconditionally. Between the ruler and the corporations matters were settled in a spirit of consultation and mutual agreement. In other words, a reciprocal contractual relationship existed between the two parties.

Individuals had no right to resist the ruler. This right could only be exercised by the magistratus inferiores whose duties it was to protect the rights of individuals. In the late Middle Ages this duty was the responsibility of the estates.

It is thus necessary briefly to explain the nature and status of the estates. They were also corporate bodies, but they consisted of a loose grouping of both individuals and primary corporations - a permanent union of equals, i.e. of the same social class within the framework of the same territory. The members of an estate co-operated as free agents without abandoning any of their rights and privileges. The estates also negotiated with the prince for official recognition so that they could speak on behalf of their members.

The best known estates were those of the clergy, the nobility and the bourgeoisie. The latter often consisted of two estates, namely the bourgeoisie or city-dwellers proper and the rural peasant farmers. Each estate had its own statute which comprised the following: the pact of confederation of the members of the estate, the requests to the prince and the charter of concession. This statute thus constitutes a double contract: that between the members of the estate to form and remain loyal to the aims of the estate and that between the estate as a corporate body and the prince whereby the latter acknowledges the rights and status of the estate in return for financial and military aid from the estate.

This right of confederation of the estates was often exercised simultaneously with the jus resistendi against a ruler who did not keep his oath, who disturbed the peace and who had consequently to be reminded of his duties. A ruler who violated his contract and who acted arbitrarily, was guilty of tyranny. In all his dealings he had to act in such a way that the laws of the various groups and peoples in his commonwealth were strictly observed. In other words, he had to acknowledge and observe the sovereignty of law and could under no circumstances regard himself as standing above the law.

Each estate had to render financial and military aid to its prince. The prince could, however, undertake nothing of any importance for which money and soldiers were required without consulting the estates and for this reason the Estates-General were convened from time to time. From his side the prince owed faith and protection to the estates. These conditions did indeed form the terms of the contract between the prince and the estates.

Against the prince who was unfaithful to his conventions, each estate could institute political and juridical sanctions. In the political field, they could first of all, exercise the right of petition. Should this prove unsuccessful, military service could be refused until the prince had redressed the wrongs. Should the prince go so far as to violate his faith with impunity, they could regard themselves as released from their promises to him and could declare war against him, or elect another prince.

In the estates there was a hierarchy of members similar to that in the corporations. We thus find in the working class "gens de lettres, de finance, de marchandise, de métier, de labour et de bras" in this order of rank.

Among the various estates equality reigned, theoretically, but the nature of their functions, the development of their liberties and their capacities of representation endowed them with an order of rank as follows: first the clergy, then the nobility followed by the third estate and the peasantry.

After such a survey, one cannot but agree with Ruggiero that "liberty is an older thing than the absolutism of modern monarchy, because it has its roots in feudal society... Feudal aristocracy, urban and rural communities, trade guilds, are privileged groups; that is to say, free each within its own sphere"<sup>10)</sup>. These views are confirmed by Bowle when he states that "the tradition of governing bodies within a commonwealth was to prove one of the most important contributions of the Middle Ages"<sup>11)</sup>. The investigations of such an acute observer as de Tocqueville also revealed the fact that until almost the end of the 17th century some French towns were..... 21

10) The history of European liberalism, p.1.

11) Western political thought, p.211.

12)  
were still small democratic republics.

From the point of view of this study, the most important aspects of political life in the Middle Ages may be summarized as follows: The relation between individual and corporation, corporation and estate, estate and prince and corporation and prince rested on a contractual basis. The powers of the territorial prince were limited and the corporations enjoyed wide powers in their own spheres. The individual was not exposed to the power of the prince, but the corporation and estate stood between them to protect the individual. The corporation was recognized by the prince as a persona moralis with rights of its own. The individual did not lose his individuality and personality in the bosom of the corporation but used his membership to develop his potentialities and to work towards his salvation. This means that the group served an ethical purpose; consequently ethics and politics were closely associated. These are the very same principles which Rousseau defends in his political doctrine as we shall show.

The corporations could create their own laws and in this respect they were led by the traditions and customs of their communities.

The estates were entrusted with the duty to protect the rights of their members, both individuals and groups, and they could resist the territorial prince when he violated his trust.

In short, the right of association, the idea of contract, the freedom and protection of the individual, wide local autonomy and the local community as the source of its own laws were "the roots of liberty" which we found in the Middle Ages.

The .....22

12) The old régime and the French revolution, p.41.



The corporations were spontaneous associations which grew up to provide in the needs of their associates. They were autonomous and were recognized as subjects of rights by the territorial prince who was obliged to enter into contractual agreements with them.

In the modern state which arose in the sixteenth century, just the opposite happened. The monarch now claimed to be the sole source of authority and law and all corporations within his realm were not regarded as moral persons and subjects of rights, but were said to derive what power they might have, from the monarch.

Here we find the absolute centralization of all power in the hands of the sovereign which is totally foreign to the tradition and historical development of the Middle Ages. And it is this situation which Hobbes tried to justify by presenting man as egoistic and unable to overcome his selfishness and so to advocate the necessity of absolute rule.

Rousseau, on the other hand, realized that such arbitrary absolutism goes against the grain of human nature, and consequently his doctrine constitutes the maintenance of the "roots of liberty" as found in the Middle Ages.

CHAPTER 3.

THE STRUGGLE AGAINST THE ABSOLUTE SOVEREIGN STATE.

As we stated in the preceding chapter, the drive for centralization and absolutism by the French monarch led to the massacre of St. Bartholomew's night in 1572. As a result of this event writings by Beza and Hotoman and the important political pamphlet Vindiciae contra tyrannos appeared to protest against the power politics of the French court and to defend the rights of the peoples and the traditional corporations of the late Middle Ages. Time and again they appeal to the sound principles of sovereignty of law, of pluralism and of contract.

As has been pointed out by Prof. A.H. Murray these Huguenot writers by no means advocated a revolutionary doctrine.<sup>1)</sup> As faithful followers of Calvin, they took their stand on traditional political institutions and rights. Like Calvin himself, they fought for the maintenance of the real nature of everything as created by God.<sup>2)</sup> The usurpation of the rights and powers of the peoples and the corporations by the monarch was the revolutionary development at this stage and not the protests of the so-called Monarchomachi.

To clear up the position a brief summary of Calvin's political thought will be appropriate at this juncture.<sup>3)</sup> Calvin believed that there was an order of nature. The right of nature is what conforms to the order of nature, and the two words, right and order are

synonymous .....24.

- 1) Prolegomenon tot Suid-Afrikaanse staatsleer, no.5. Bulletin of the Department of Philosophy, University of Cape Town, no.6, Oct.1956. p.15.
- 2) A.H.Murray: Die Meervoudigheidsbeginsel in die Westerse Staatsopvatting. Op die horison, Maart 1949, p.22.
- 3) R.H.Murray: The history of political science from Plato to the present. Cambridge, Heffer, 1926.pp.143-145.

synonymous. The order of nature gives birth to the right of nature. The world is the product of the command of God. The order of nature as created by God was upset by the entry of sin into the world and as a result of this corruption that dwells in man, we have need of some order and check which keep us in our place. The state has thus been instituted by the grace of God because of man's need. It was not a product of human reason and will.

In Calvin's political theory we find that the moral law, which is the same as the law of God, is described as "the true and eternal rule of righteousness, prescribed for men of all nations and times, who wish to conform their lives to God's will... every nation is left free to make such laws as it foresees to be profitable for itself. Yet this must be in conformity to that perpetual rule of love, so that they indeed vary in form but have the same purpose. For I do not think that those barbarous and savage laws such as gave honour to thieves, permitted promiscuous intercourse, and others both more filthy and more absurd, are to be regarded as laws. For they are abhorrent not only to justice, but also to all humanity and gentleness."<sup>4)</sup>

Even in his perverted and degenerate nature, man still is a rational being who understands that every sort of human organization must be regulated by laws and who comprehends those laws.<sup>5)</sup>

Calvin distinguishes between spiritual and civil government, but the latter has as its appointed end to cherish and protect the outward worship of God and to defend the doctrine of piety and the position of the church. If, however, rulers should command anything against God,

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4) Institutes of the Christian religion, iv. xx. 15.  
5) Ibid. ii. ii. 13.

it should be left <sup>6)</sup>unesteemed.

Calvin clearly regards it as the duty of the magistrates to withstand kings who violate the freedom of the people. The following passage leaves us in no doubt as to his views on this matter: "For if there are now any magistrates of the people, appointed to restrain the willfulness of kings (as in ancient times the ephors were set against the Spartan kings, or the tribunes of the people against the Roman consuls, or the demarchs against the senate of the Athenians; and perhaps, as things now are, such power as the three estates exercise in every realm when they hold their chief assemblies), I am so far from forbidding them to withstand, in accordance with their duty, the fierce licentiousness of kings, that if they wink at kings who violently fall upon and assault the lowly common folk, I declare that their dissimulation involves nefarious perfidy, because they dishonestly betray the freedom of the people, of which they know that they have been <sup>7)</sup>appointed protectors by God's ordinance".

From these extracts it is clear that Calvin stood for the sovereignty of a moral law which he identified with the law of God and which he regarded as <sup>8)</sup>"engraved upon the minds of men", thus as identical to reason. To this law all rulers and nations are subject, although every nation may make its own laws. Here he allowed for pluralism in legislation. It must be remembered, however, that he judged laws according to their actual content, and not according to the source whence they derived. The ethical end of civil government is emphasized in the duty of protecting the worship of God. Furthermore subjects owe no obedience to a ruler whose commands violate the law of God.

These.....26

6) Institutes of the Christian religion, iv. xx. 32.

7) Ibid. iv. xx. 31.

8) Ibid. iv. xx. 16.

These principles have been elaborated by other Huguenot writers such as Beza<sup>9)</sup> and Hotoman<sup>10)</sup> but as the majority of their arguments are also to be found in the Vindiciae contra tyrannos<sup>11)</sup> which can be regarded as an excellent summary of the Huguenot case against the emergent absolute sovereign state, I shall concentrate on the political theory of the latter.

According to the Vindiciae men, born rather to command, than to obey, have not willingly admitted to be governed by another. They will only submit themselves to the commands of others for some special and great profit that they expected from it. Kings are thus established to maintain by justice, and to defend by force of arms, both the state and particular persons from all<sup>12)</sup> damages and outrages.

The people are thus conceived as a body consisting of independent, freedom-loving individuals who will not submit to authority unless they can reasonably expect some indispensable profit from such submission.

Only God has absolute sovereignty. He alone reigns by his proper authority; kings only reign by derivation. Kings are God's delegates and their jurisdiction is thus limited.<sup>13)</sup> In other words, kings may not command anything which conflicts with God's law.

At the inauguration of kings, we find two sorts of covenants or contracts: the first is between God, the king and the people, that the people might be the people of God. The second is between the king and the people, that the people shall obey faithfully and the king command justly.<sup>14)</sup>

At..... 27

9) Theodore Beza: Concerning the rights of rulers over their subjects. Translation by H.L. Gonin. Cape Town, H.A.U.M., 1956.

10) Franco-Gallia. 1574. London, Longmans, 1738.

11) Vindiciae contra tyrannos, by Junius Brutus. Introd. by H.J. Laski. London, Bell, 1924.

12) Ibid., pp. 139-140 (139-140)

13) Vindiciae, p.67.

14) Ibid., p.71.

At another place, the Vindiciae gives the following description of the concluding of the contract: "the people by way of stipulation, require a performance of covenants. The king promises it. The people ask the king, whether he will govern justly and according to the laws? He promises he will. Then the people answer, and not before, that whilst he governs uprightly, they will obey faithfully. In the first contract the king promises to serve God religiously; in the second, to rule the people justly".<sup>15)</sup>

From both these versions of the relationship between the king and the people it is clear that the people are a corporate body and a subject of rights and that there is an acknowledgment of sovereignty of law to which both king and people have to submit. Both parties agree to do so by means of a reciprocal and binding contract.

As the king receives his authority over the people by virtue of a contract, he is inferior to the whole company of the people, although he is superior to any individual member of it.

Kings should further remember that after God, they hold their power and sovereignty from the people.<sup>16)</sup> All kings at first were elected and those who hold their crowns and royal authority by inheritance, have or should have, first and principally their confirmation from the people. As people are able to choose and establish their kings, it follows that the whole body of the people is above the king.<sup>17)</sup>

It should be noted at this stage that in the Vindiciae the people are regarded as a corporation and that.....28

15) Ibid., p.175.

16) Ibid., p.118.

17) Vindiciae, p.124.

that it is only in its corporate capacity that the people are above the king. Considered one by one, the people are all under the king. On the other hand the subjects are neither the king's slaves or bondsmen, but each of them ought to be held as the king's brother.

The conception of law as it appears in the Vindiciae shows the following characteristics: Law is first of all identified with justice. "Where there is no justice, there is no commonwealth".<sup>18)</sup> Next law is regarded as reason and wisdom itself and as something not subject to the emotions of persons.<sup>19)</sup> Then we find the same notion that we noticed in Calvin's doctrine above, namely that nothing is just only because the king has commanded it, but that it must be just in itself.<sup>20)</sup> In other words, laws should be judged according to their contents. Laws are received by the king from the people and it is his duty to maintain these laws. Under God, the people are thus the source of the laws and these laws the king may not amend without the consent of the assembly of the estates. The sovereignty of law is clearly asserted in the following passage: "It remains always certain, that it is the laws which have power over the lives and deaths of the inhabitants of a kingdom, and not the king, who is but administrator and conservator of the law."<sup>21)</sup> Finally, the law of God is binding on the authority of all princes.<sup>22)</sup>

When we come to the jus resistendi as advocated in the Vindiciae, it at once becomes clear how closely the arguments follow the pluralistic set-up of the late Middle Ages. If the king follow after strange gods and seek also to attract his subjects, endeavouring by all means to ruin the church, it is the duty of the people to.....29

18) Ibid., p.105.  
19) Ibid., p.145.  
20) Ibid., p.147.

21) Vindiciae, p.155  
22) Ibid., p.80

to contain him within the limits of his obedience to God, otherwise they make the fault of their king their own transgression.<sup>23)</sup> However, only the whole body of the people, and under no circumstances individuals, may punish the king.<sup>24)</sup> By the whole body of the people is understood only those who hold their authority from the people and whom the people have elected to represent their whole body. They are the inferior magistrates, assembly of estates, judges and provosts of the town.<sup>25)</sup>

As it is lawful for a whole people to resist and oppose tyranny, so it is also lawful that the principal persons of the kingdom may, for the good of the whole body, confederate and associate themselves together to offer resistance.<sup>26)</sup>

Just as the king is responsible to God for his government of the people, so also the inferior magistrates are responsible to God to safeguard the rights of the people and to restrain the king who violates the law of God. If, however, the magistrates should fail to do their duty, the private person has no other option but to flee.<sup>27)</sup>

The Vindiciae has not got much to say about the relation between church and civil government, probably because it did not visualize any serious conflict between them in the pluralistic set-up which it advocated. In this set-up the church, like any other corporation, was sovereign in its own sphere. The Vindiciae asserted, however, that "although the church be not increased by arms, notwithstanding it may justly be preserved by the means of arms."<sup>28)</sup> It was thus the duty of the king to preserve the established church and if he should fail in his duty, the inferior magistrates should act.

Kings.....30

23) Ibid., p.91  
24) Ibid., p.94  
25) Ibid., p.97

26) Ibid., p.99  
27) Ibid., p.111  
28) Vindiciae, p.115



Kings have no right to take the property of the people, it is only their duty to protect it. They are not even absolute lords proprietors of the demesnes.<sup>29)</sup> If the king alienate the demesnes without the approbation of the estates, it is void.

In pleading for the right of intervention, the Vindiciae asserted "the brotherhood of men in the natural law of justice"<sup>30)</sup> Neighbour princes have the right, even the duty, to intervene in cases of manifest oppression, religious or otherwise. They should do so, not to invade and usurp another's authority, but to contain the other within the limits of justice and equity.

As far as religious oppression is concerned, intervention is justified by the fact that the church is one and that its unity lays the duty of its defence on all its members. Territorial demarcation has no effect in this case. The same holds good in the case of tyrannical oppression which outrages human ideas of justice. Even the heathen admits principles of justice and in any case, it is only right and proper that the interests of all should be promoted. There are thus three grounds for intervention: the unity of the church of God; the brotherhood of men in the natural law of justice; and the duty to aid the innocent and to maintain justice.

Protesting vehemently against the tendency to centralize government powers and the claims to sovereignty arising at this time, the Vindiciae forcefully stressed the internal autonomy of the peoples or corporations in the commonwealth and the sovereignty of law. It showed that the king was subject to the whole body of the people, that he received the laws from the people and that the people had the right to restrain and resist a tyrannical king through their elected magistrates.

These.....31

29) Ibid., p.161

30) A.H. Murray, The Vindiciae contra tyrannos. Acta Juridica, 1958. p.308.

These principles offer the best guarantee for the development of free communities within a commonwealth and it is only in the bosom of such communities that the individual can come into his own.

The Vindiciae upholds the principles of contract, pluralism, sovereignty of law and the right of revolt against tyranny by the inferior magistrates elected by the people. This stand was nothing more than a defence of the political situation that prevailed in Western Europe before an assault was made on the rights and privileges of the peoples and corporations by self-seeking monarchs.

Hobbes, by defending the right of monarchs to absolute power, disregarded the historical freedoms and privileges of the peoples and corporations, while Rousseau, as we shall show later, pleaded a case in many ways similar to that of the Vindiciae.

In Rousseau's political doctrine the principles of freedom and good government defended in the Vindiciae are restored to their former glory. There we find sovereignty of law in the concept of the volonté générale and the people as a corporate body, or persona moralis, which creates its own laws. This corporate body is founded on the free consent of its members who are bound together by a mutual agreement. The prince in this case is only the executive official of the sovereign people, while the principle of pluralism is underlined by Rousseau's insistence on the desirability of a small state.

CHAPTER 4.

THE CHAMPIONS OF THE ABSOLUTE SOVEREIGN STATE.

Shortly after the publication of Hotoman's Franco-Gallia in 1573 and Beza's De jure magistratuum in 1574, the first work defending the sovereign state saw the light of day under the title of Les Six Livres de la Republique by Jean Bodin. This book appeared in 1577, two years before the Vindiciae contra tyrannos, although the latter may have been written already in 1574. In 1632 another important book in favour of the absolute sovereign state appeared, namely La Souveraineté du Roi by Cardin le Bret. This book, for some or other inexplicable reason, has been overlooked or ignored by almost all writers on the history of political thought; and yet, it contains an extremely important statement of the case for the absolute sovereignty of the king as will be seen below.

(a) Bodin.

Jean Bodin became famous as the first political theorist to base his conception of the state squarely on the concept of sovereignty. This sovereignty was located in the prince. However, Bodin hereby did not imply that the prince's sovereignty was arbitrary or unlimited.

"Sovereignty is that absolute and perpetual power vested in a commonwealth which in Latin is termed <sup>1)</sup> majestas". Sovereignty implies, for Bodin, the absolute and only original competence for legislation within the <sup>2)</sup> territory of the state. In respect of his law-making capacity, the sovereign prince can tolerate no competition within his territory.

When.....33

- 1) Jean Bodin, Six books of the Commonwealth. Abridged and tr. by M.J. Tooley. Oxford, Blackwell, p.25.
- 2) H. Dooyeweerd, De strijd om het soevereiniteitsbegrip in de moderne rechts- en staatsleer. Amsterdam, Paris, 1950. p.5.

When Bodin says that sovereignty is perpetual, he means that the true sovereign always retains his power and that he does not receive it temporarily from the people or someone else. This sovereignty lasts as long as the person who exercises the sovereign power, lives.

When he says that sovereignty is absolute, he means that the sovereign power is not subject to the commands of anybody, except to the law of God and the law of nature. The king is not bound by the laws of his predecessors or his own laws. As far as positive law is concerned, it can be said that, according to Bodin, the king is above the law.

Apart from the law of God and the law of nature, Bodin says that the king is also bound to honour promises made by him to his subjects, because this forms part of the law of nature. Also the constitutional laws of the realm, especially those that concern the king's estate, such as the Salic law, cannot be infringed by the king.

From all this, Bodin draws the conclusion that the principal mark of sovereign majesty and absolute power is the right to impose laws generally on all subjects regardless of their consent.<sup>3)</sup>

<sup>4)</sup>  
As we have seen above, laws affecting the subjects could not be amended without the consent of the three estates of the whole of France. Now Bodin calmly asserts that the king is not bound to accept the advice of the estates. He may even act in a way quite contrary to what they wish if his acts are based on justice and natural reason. Bodin pictures the sovereign as a powerful prince to whom the estates came as humble petitioners without any power of commanding or determining.

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3) Op.cit., p.32.

4) Chap.~~III~~ supra.

It need hardly be said that this state of affairs is wholly incompatible with the conditions described and defended by the Vindiciae. It is simply inconceivable to Bodin that the prince could be subject to the estates, as he would then be neither a prince nor a sovereign. The prince only consulted the estates to obtain their obedience to the laws and not because he was unable to legislate independently of them.

The magistratus inferiores who, in the Vindiciae were elected by the people and were responsible to God to safeguard the rights of the people, only function as officials of the prince from whom they derive all their power and authority in Bodin's set-up. They are not bound to obey orders of the prince which are contrary to the divine and natural law. If the magistrate is aware that the prince is setting aside a just and useful provision of positive law for one that is less so, he can delay the execution of the edict till he has made representations. If, notwithstanding these remonstrances, the prince insists on obedience, the magistrate has no choice but to obey.<sup>5)</sup> However, the prince will be well advised not to seek open conflict with his magistrates.

Whereas in the Vindiciae the inferior magistrates were chosen by the people and were responsible to God, Bodin makes them subject to the prince and the laws. They do not hold their powers from the people, but from the prince. The magistrates could not under these circumstances, exercise the same right of rebellion ascribed to them in the Vindiciae.

The individual subject is never justified to attempt anything against his sovereign prince, however  
evil.....35

5) Op.cit., pp. 86-87.

evil and tyrannical he may be. He may only refuse to obey commands that are contrary to the law of God and of nature, but then he must either flee, go into hiding or suffer death, rather than attempt anything against his prince's life and honour.<sup>6)</sup>

According to Bodin citizenship is purely derived from the submission of the individual to a prince, while in the Vindiciae the individual as a member of an autonomous corporate body, the people, is prior to any ruler and does not derive his status in the community from a ruler. In return for the faith and obedience rendered to Bodin's prince, the latter was expected to maintain justice and to give counsel, assistance, encouragement and protection to the subject. The submission and obedience of a free subject to his prince, and the tuition, protection, and jurisdiction exercised by the prince over his subject are the characteristics of a true citizen.<sup>7)</sup>

Although Bodin, as we shall see below, recognizes the place and usefulness of corporations in the commonwealth, he also seems to visualize a direct relation between individual subject and prince, so that in many cases there may be no corporate body between the two apart from the family.

Bodin leaves space for corporations in his conception of a commonwealth. They may establish such ordinances as they think in their best interests, provided they do not derogate from the statutes of the corporation, imposed or authorized by the king, or run counter to the laws of the commonwealth.<sup>8)</sup> Here we see that although corporations are allowed a certain measure of autonomy, the scope of such autonomy must be authorized by the prince. It is a characteristic of Bodin's political.....36

6) Bodin, Op.cit., p.68.

7) Ibid., p.21.

8) Ibid., p.103.

tical theory that, although he retains many of the institutions of the medieval period, he calmly undermines their independence by posing the sovereign's prior approval as a condition for their activities and even existence.

However, there are strong traces of pluralism in Bodin's theory. Thus he says that "the whole body of the citizens... when subjected to the single sovereign power of one or more rulers, constitutes a commonwealth, even if there is a diversity of laws, languages, customs, religions and races"<sup>9)</sup> It is thus possible that a king can rule a number of peoples with different traditions and laws in his realm. This was indeed the case in the Middle Ages.

In addition to what we remarked about the position of corporations in Bodin's commonwealth above, it should be stressed that he regarded them as a legitimate means of social organization subject to the approval of the sovereign. The existence of corporations he regarded as essential to the welfare of the commonwealth, because such associations engender friendship between individuals and this is something that should be encouraged in order to maintain a sound commonwealth.

For Bodin the state originated in violence. The state is necessary because men are wicked and the sin of which they are guilty is the sin of injustice towards one's fellow-men. The development of those qualities by which one can distinguish between good and evil, true and false, pious and impious, is not only the sovereign good of the individual but also the true end of the state. The commonwealth "is ordained to the contemplative virtues as its final end"<sup>10)</sup>

Bodin.....37

9) Op.cit., p.20.

10) Ibid., p.5.

Bodin identifies the summum bonum of the individual with that of the state. However, for him the state is not the means to the good life because political activity is the highest exercise of virtue; for him the state alone can maintain those conditions under which subjects can individually live virtuous lives. Here again it seems, that although corporations in the commonwealth may serve a useful purpose, it is actually the state itself and not these intermediate bodies which enable citizens to achieve the virtuous life.

Bodin makes a point of stressing the fact that the prince cannot take his subjects' property without just and reasonable cause. He seems to regard it as a law of nature that private property should be respected.<sup>11)</sup>

This brings us to Bodin's notion of law. Edicts and ordinances do not bind the ruler except in so far as they embody the principles of natural justice. A distinction is made between right and law, for the one implies what is equitable and the other what is commanded. Law is nothing else than the command of the sovereign in the exercise of his sovereign power.<sup>12)</sup>

Although he agrees that customary law is as binding as statute law, there is a difference between law and custom. Custom is established over a long period of years and by common consent, whereas law is made on the instant and draws its force from the sovereign. Custom only has binding force by the sufferance and during the good pleasure of the sovereign prince, and so far as he is willing to authorize it. This is clearly just the reverse of the position stated in the Vindiciae that the king receives the laws from the people.

The.....36

11) Op.cit., p.35  
12) Ibid., pp.34-35.



The attributes of sovereignty are the following:

- (a) the power to make law binding on all subjects in general and on each in particular;
- (b) making of war and peace;
- (c) the power to institute the great officers of state;
- (d) the final resort of appeal from all other courts;
- (e) the right of coinage, the right of levying taxes,<sup>13)</sup> of granting exemptions and privileges.

Bodin definitely favours a monarchy, and also the centralization of all sovereign power in one person. It is interesting to recall that exactly the same powers which Bodin places in the hands of the sovereign,<sup>14)</sup> were reserved by Hotoman for the general council. Sovereignty is thus not only absolute and perpetual, but also indivisible. Consequently the prince cannot<sup>15)</sup> share his sovereign power with anybody.

It will only be fair to point out that, although Bodin tries to justify the absolute sovereign state with all power concentrated in the person of one prince, he does not advocate arbitrary rule. Time and again throughout his book, he warns the prince to practice moderation. He should act justly towards his subjects, he should consult the estates and the councils although he is not bound to accept their advice; no abrupt changes in the law of the people should be made. In short, the prince should always act in such a way that his behaviour will automatically command the respect of his subjects.

(b) Le Bret.

Cardin le Bret in his La Souveraineté du Roi which was published in 1632, also attempted as Bodin before him, to justify the existence and growth of the absolute sovereign state. He is, however, not entirely convinced.....39

13) Ibid., p.44.

14) Franco-Gallia, p.77.

15) Op. cit., p.52.

convinced of absolutism. At times he regards the sovereign only as the depository of the power of the state; at other times he again identifies the state power with the will of the sovereign.<sup>16)</sup>

The prince is subject to the law of God and the law of nature, but to no other law. His sovereignty is supreme, perpetual and indivisible. He has the right of absolute command and his sole purpose is the peace and public well-being of his subjects.

The first people saw that they were exposed to attack by their enemies and that the strong suppressed the weak. God consequently inspired them to institute a king and to give him the sovereign authority over them.<sup>17)</sup> Here it should be recognized that it is the people who gave sovereignty to the kings. Similarly the king does not himself create the law, but he only gives expression to a legal power that exists outside him.

The king should always exercise his powers in the interests of his subjects and not in his private interest. Because of their public character, it is necessary that the approval of the king be obtained for the establishment of any corporations in the commonwealth.

Perfect sovereignty can only be attributed to those who are subject to nobody except to God and his laws.<sup>18)</sup> Laws, such as the Salic law by which succession is governed, and which ensure the perpetuation of royal authority, are binding on both king and subjects, but they only serve to strengthen the royal authority.

The power from which government over people

derives.....40

16) G. Picot: Cardin le Bret (1558-1655) et la Doctrine de la Souveraineté. Nancy, 1948. p.111.

17) Picot, Op.cit., p.104.

18) Ibid., p.134.

derives, is willed by God and it is God who transfers this power to kings who are responsible to nobody but Him. God inspires the king with good advice and so his human weaknesses can be overcome. He is thus in a position to promulgate laws without the advice of his council and the courts.

All the attributes of sovereignty which Bodin mentions, are also to be found in Le Bret's political theory.

Le Bret pays much more attention to the relation between state and church than Bodin. He distinguishes between temporal and spiritual power and states that the king is independent of the pope. The church remains, however, within the commonwealth and like the other corporations it has a public character. It is thus under the protection of the king who, in his coronation oath, promised to defend the church. This justifies a certain measure of intrusion by the king into the affairs of the church. It is not the duty of the king to define the faith and the doctrine of the church, but he has to take care that no schism occurs.<sup>19)</sup>

All the land, also that of the church, comes under the jurisdiction of the king. The church forms part of the kingdom and has the same duties towards the king as the rest of the subjects. A distinction between ecclesiastic and royal jurisdiction is no longer justified, because all judges are now Christians.

Le Bret also reviews the relation of the king to various traditional institutions. The Conseil d'Etat is only an administrative and technical body. When the king delegates powers to his officials, he does not

divest.....41

19) Op.cit., pp.150-160.

divest himself of those powers; it is always the king who acts. The Etats-Generaux may not assemble without the permission of the king. Even congregations and monasteries may not be established without the permission of the king. The right of life and death, banning and confiscation belongs to the king; also the property of the condemned.

The sovereign power of the king is limited by three kinds of law: the law of God, the law of nature and "les loix fondamentales de l'Estat pour ce que le Prince doit user de la souveraineté selon la propre nature en la forme et aux conditions qu'elle est établie"<sup>20)</sup> In other words, the king should act like a king and not like a tyrant.

Under the law of nature, Le Bret groups such actions as to practise justice, to protect the weak against exploitation and suppression by the strong, and to maintain peace. The right to property is also a right of nature which should be respected by kings.<sup>21)</sup> Furthermore, one should keep your given word.

A king can strengthen and promote his sovereign power by always acting according to established tradition; by respecting rules and so to inculcate respect for the law in his subjects; by allowing his officials to perform their duties to the best of their abilities and to bring to his attention flaws in the law and the inconveniences caused by them; by abiding by established customs and rules and so to enhance his prestige; by always acting in a wise and moderate manner, magnanimous towards the virtuous and austere towards the mischievous.

Old, established privileges should be tolerated, such as those of the nobility, the clergy and the statutes.....42

20) Picot, Op.cit., p.184.

21) Ibid., pp.188-189.

statutes of the provinces. By doing so, the king will exercise his powers in a just and legitimate way. In his own interest the king should uphold his dignity and good name by behaving himself in a decent way. The best way to respect the divine and natural order, is to follow the advice of wise men. The king should be careful not always to ignore the advice of his officials, because they are also responsible to God for the advice they give him.

Only slight signs of resistance to the king remain in the theory of Le Bret. The Chancellor and the Guardian of the Seals have the right to refuse to countersign any royal act which seems to them to be unjust. Le Bret admits that there may be a legitimate revolt if the king should command anything contrary to the law of God, for example unjust suppression and execution<sup>22)</sup> of innocent people.

Le Bret also admits that the Etats-Generaux may intervene in certain matters. So, for instance, it is necessary to assemble the estates to ask for their assent to alter the currency. It is furthermore an established principle that the prince cannot place his subjects under the jurisdiction of another prince against their will.

It is a characteristic of Le Bret's political theory that he tries to justify the centralization of all sovereign power in the person of the king but that he is hesitant to deprive the old, traditional institutions of all their rights and privileges. Therefore he counsels his king time and again to respect those institutions and customs, although it is in his power to rule without their consent or advice.

Now.....43

22) Picot, Op.cit., pp.208-209.

Now that we are coming to the end of this preliminary section and before proceeding to examine the doctrines of Hobbes and Rousseau in more detail, it is an appropriate moment to summarize the principles that have been discussed thus far.

We have seen that in the late Middle Ages there existed in Europe a host of independent corporations and peoples within each commonwealth and that the territorial prince recognized and respected the rights and freedoms of these corporations. This is the position which the Huguenot theorists, and notably the Vindiciae, attempt to maintain. On the other hand the writings of Bodin and Le Bret seek to undermine the independent existence of corporations and peoples. They state clearly that these corporations derived their authority from the prince. They are thus not prior to the prince and original subjects of rights. In this way the means to resist an unjust prince largely falls away and it is left to the conscience of the prince to justify his acts before God. In the Vindiciae the estates and the inferior magistrates were also responsible to God for the well-being of the people and they were thus fully entitled to restrain a prince who violated the law of God and nature. Bodin and Le Bret held that God willed that people should be ruled by sovereign monarchs, and these monarchs are only responsible to God for the way in which they treat their subjects. It goes without saying that the king is above the positive law.

The elimination of the autonomous existence of corporations and peoples leads to the isolation of the individual. He now stands on his own against the supreme power of the absolute sovereign.

The notion of contract also lost much of its value in the hands of Bodin and Le Bret. Although they

admit that the prince receives his authority from the people and that the prince should give expression to the laws of the people, they maintain that the consent of the people is not required for the laws he makes concerning the people. The prince is not responsible to the people for his actions, he is only responsible to God.

Both Bodin and Le Bret state that the prince should not violate the law of God and the law of nature, but they refuse the inferior magistrates and the estates the right to rebel against a prince who openly violates those laws. Under such circumstances sovereignty of law has no meaning.

The concentration of the sovereign power in the hands of a king who is the head of a powerful unitary state and the elimination of the spontaneous and independent existence of corporations within the commonwealth, constituted a grave threat to individual liberty in the sixteenth century. Moreover, such a development was totally in conflict with conditions and traditions of pluralism and corporate freedom prevailing at the time.

Whereas the Vindiciae emphasized the contractual connection between the king and the people whereby the king promised to rule the people according to their own laws, Bodin and Le Bret put no such obligation on the king. The king, in their opinion, cannot bind himself by a promise to the people. The idea of contract which implies maintenance of the rights of the people as a corporate body by the ruler, thus falls away. The people are no longer recognized as a persona moralis and a subject of rights as in the Vindiciae.

Hand in hand with this development goes the notion of pluralism. Both Bodin and Le Bret recognized the necessary functions that corporations may play in a

sound commonwealth, but none of them would allow full autonomy or legal personality to these bodies. They held that these bodies could not be legitimately established without the authority of the sovereign and consequently their powers and jurisdiction are derived from the sovereign. Another logical result of this view, is that the jus resistendi has no place in such a set-up.

Also sovereignty of law as defended by the Vindiciae loses its meaning. It is good and well to say that the king is subject to the law of God and of nature, but once those institutions, such as the magistratus inferiores, whose duty it was to see that the king always observed the law of God and of nature, were denied the power to restrain a tyrannous ruler, the safeguard of the sovereignty of law was effectively removed.

It is thus clear that both Bodin and Le Bret successfully undermined also those cardinal principles upon which the Vindiciae built its case for the maintenance of the freedom and rights of the people, namely the people as a corporate body, the notion of a reciprocal contract between people and ruler, pluralism within the commonwealth and the sovereignty of law. In the history of political philosophy Hobbes was the main exponent of the current of thought initiated by Bodin and Le Bret.



CHAPTER 5.

'THE POLITICAL PHILOSOPHY OF THOMAS HOBBS.

The argument in favour of the absolute sovereign state that we found in the writings of Bodin and Le Bret was developed to its logical conclusion in the political philosophy of Thomas Hobbes. This does not mean that Hobbes was influenced by these two political theorists. As far as we know, Hobbes might have been totally unaware of their existence. He was a far more profound philosopher than either of them and he prided himself on his originality. They must merely be regarded as forerunners of Hobbes, because they were trying to justify an historical situation which had already developed at the time when they were writing. Hobbes wrote in the same vein to remedy a position which was threatening the supreme authority of the sovereign in his own country.

Although Hobbes was conscious of the originality of his thought, it is none-the-less evident that he read much and widely. He became acquainted with the ideas of both Plato and Aristotle, but these he soon rejected when he read the writings of Kepler and Galileo. Later he was also profoundly influenced by the method developed by René Descartes. This is thus the appropriate place<sup>1)</sup> to give a brief résumé of Descartes' method.

Descartes renounced empiricism as a method because of the illusiveness of the senses. Only motion and extension are essential properties of the physical world. All other sense impressions he called secondary qualities which he located not in the things, but.....47

1) Cf. Burt: The metaphysical foundations of modern science. Rev.ed. London, Routledge & Kegan Paul, 1950. pp.96-125.

accomplishments in science. Hobbes distinguished between experience which gives rise to historical knowledge, and reason which gives rise to scientific knowledge. For him scientific knowledge was the product of reason rather than of sense and it permitted knowledge of causes and not simply of effects. In this connection Hobbes stressed the fact that true knowledge involved correct speech in accordance with definitions. Because he regarded the state as an artificial, man-made body, he thought that one could come to know with certainty the formula of its construction by means of the mathematical method. "Hobbes claimed that his originality consisted in trying to do for civil philosophy what Galileo<sup>2)</sup> had done for natural philosophy..." He did not attempt to explain the existence of actual states; he tried to demonstrate how a rational state ought to be constructed.

According to Hobbes there can be no cause of motion, except in a body contiguous and moved. This principle he applied both to nature and man, and by doing so, he rejected Aristotle's final cause, pointing out that a final cause could only have a place in such things as have sense and will in which case it was also an efficient cause.

Armed with this new 'scientific' approach, Hobbes challenged many of the political ideas which were generally accepted at the time when he started writing. He rejected outright the Divine Right of Kings and held that the sovereign embodied the wills of his subjects but interpreted his social contract in such a way that it resulted in an absolute sovereign. As far as the right to resist was concerned, he maintained that the subject was bound to obey the government.....49

2) R. Peters, Hobbes. Penguin books. 1956. p.74.

government only so long as it was fulfilling its function of safeguarding the subject<sup>and</sup>/of preserving peace.

Sir Edward Coke defended the traditional view that there was a fundamental law binding on king and subjects alike and that it was there to be discovered. Parliament was regarded as a kind of court and its statutes were deemed to be declarations of what the law was. This traditional view was rejected by Hobbes who maintained that laws were being made, that they were the commands of the sovereign. He also feared any religion which afforded the individual an authority other than the sovereign. In his view the church should be subordinate to the state and the sovereign should be responsible for ecclesiastical affairs. This was the stand taken by Hobbes on four burning issues of his time. How he came to this view will be ~~examined~~ presently.

It is important to examine Hobbes' conception of man in order to understand his political philosophy correctly. According to him the thoughts of man are "representations" or "appearances" of some quality, or other accident of a body without us, called an "object". This object works on the eyes, ears or other parts of a man's body and so produces a diversity of appearances.

The cause of sense is thus the external body, or object, which presses the organ proper to each sense, either immediately or mediately and this pressure, by the mediation of the nerves, and other strings and membranes of the body, continued inwards to the brain and heart where it causes a resistance or endeavour which being outward, seems to be some external matter. The sensations caused in us by external objects, do not belong to those objects, but is nothing else but original fancy. In other words, the so-called secondary qualities.....50

qualities are only phantasms in our heads caused by the motions of external objects interacting with our sense-organs but representing nothing outside us.

Hobbes thus accepted the assumption that bodies in motion exist independently of our perception of them, and that mathematical thinking about them represented their real properties. He simply developed a casual theory of sensation and saw no need for a theory of representation.

He may have thought that as a motion can only produce another motion, such a motion can never represent a colour unless it was also a motion. His explanation of sense is thus purely mechanical.

It is clear that according to Hobbes, scientific knowledge was the product of reason rather than that of sense and that it permitted knowledge of causes and not simply of effects. All actions have causes and are thus necessitated, and all human actions are caused by motions external to them. Hobbes thus regarded an action as determined when it is causally explicable.

However, he even went further and implied that if a causal explanation can be given of an action then it could not have happened otherwise than it did.

'Determined' thus meant for him inevitable as well as causally explicable. From this attitude it follows logically that Hobbes would take an unhistorical view of politics; that he regarded the state as an artificial creation of human reason. And as he regarded the actions of men as being determined and inevitable, these actions can also be said to be predictable. The task of the artificial Leviathan was thus simply to control the actions of its subjects in such a way that desirable effects may result. Hobbes' state was thus squarely based on the principles of natural science as he understood them.

In order to discover the true foundations of a commonwealth, Hobbes attempts to picture man in a state of nature which is prior to civil society. Unlike Aristotle, Hobbes does not believe that man is by nature a 'political animal'. "We do not by nature seek society for its own sake but that we may receive some honour or profit"<sup>3)</sup>. We do not form a society for love of our fellow-men, but for the love of ourselves. Although his rationality distinguishes man from animal, yet man's actions are not solely motivated by his reason but also by his passions. The small beginnings of motion within the body of man, before they appear in visible actions, are called "endeavour" by Hobbes. When this endeavour moves towards something that causes it, it is called appetite or desire. When the endeavour is away from something, it is called aversion. Now whatever is the object of any man's appetite or desire, he calls good, and the object of his hate or aversion, he calls evil. There is nothing that is absolutely good or evil. These qualities do not belong to the nature of objects, but originate from the passions of man.

Men are so equal by nature that even the weakest are strong enough to kill the strongest, either by secret machination, or with the help of others. If any two men therefore desire the same thing, they become enemies. Competition among men for the objects of their desire leads to a war of every man against every man. In this state of nature man lives in continual fear and danger of violent death and his life is "solitary, poor, nasty, brutish, and short"<sup>4)</sup>. In this state of war there can be no question of just or unjust. In the state of nature there is no common

power.....52

3) English works, Molesworth ed., vol.2, p.3.

4) Leviathan, ed. Henry Morley, 2nd ed. London, 1886, p.64.

power and consequently no law and where there is no law there can be no injustice. Men therefore live in a state of perpetual insecurity and fear. The passion which lies at the root of all the strife, is pride, a desire for power and even greater power. Only the fear of violent death which encompasses all the aversions, can counteract this passion for power. It is fear of death which eventually brings man to his reason and impels him to come to a mutual agreement with his fellow-men so that arrangements may be made for the peace and security of all. It need hardly be said that the law of nature is silent in the state of nature.

According to Hobbes, civil society and consequently the state, is an artificial creation which originates from the nature of man. We have seen that in the state of nature, man lives in a miserable condition of war. Fear of violent death, however, forces man to act reasonably and thus we see a great multitude of men assemble to institute a commonwealth in which there will be a visible power to keep all the individuals in awe and force them by fear of punishment to perform their covenants and to observe the laws of nature. It is the foresight of their own preservation and peace which persuades men to introduce that restraint on their natural freedom which enables them to live harmoniously in commonwealths. A commonwealth which comes about by mutual agreement among individuals, Hobbes calls a commonwealth by institution. A commonwealth can, however, also come into being by acquisition, that is, where the sovereign power is acquired by force when men for fear of death or bonds authorize all the actions of that man (or assembly) that has their lives and liberty in his power.

However.....53

However, it is the commonwealth by institution that brings us to Hobbes' theory of contract. As Mabbott pointed out "the paradox of politics is the reconciliation of liberty and obligation, and a free enquiry might naturally light on contract as a parallel. A contract is freely made but binds its maker; it gives him something of value but at a stated cost".<sup>5)</sup>

At the time when Hobbes wrote, there were two kinds of contract current in political theory: a pactum unionis and a pactum subjectionis. The first can be regarded as a contract of association which can account for the institution of a civil society. The second is an agreement on the part of a civil body to submit to a particular form of government. A covenant between king and people whereby the people submit to the government of the king under certain agreed conditions, is an example of a pactum subjectionis.

Hobbes' version of contract is a pactum unionis. A number of individuals, driven to their right senses by fear of violent death, decide mutually to give up their right of governing themselves to a certain man (or assembly of men) and to authorize him to act on their behalf. In the state of nature every man had an absolute right to do everything that he thought necessary to preserve his life and well-being. This led to a state of war of every man against every man. Hobbes thought that the only effective way to put an end to this miserable state of war, was to transfer the right of every man to a single authority who shall have the power to exercise that right on behalf of the citizens and to take such punitive measures as may be necessary to preserve the safety of the individuals and to

maintain.....54

5) The state and the citizen. London, 1958. p.12.

maintain peace among them.

A few characteristics of Hobbes' contract theory should be stressed. It should be clearly understood that, according to Hobbes, the individuals agree of their own free will to transfer their natural right to a sovereign. As the individual had an absolute right in the state of nature, the transfer should also be absolute and consequently the resulting power of the sovereign is absolute as well. A sovereign is thus instituted with the consent of his subjects and in his person he is the representative of everyone of them. It should, however, always be remembered that the sovereign is no party to the contract. He has no obligation towards his subjects. Hobbes could not visualize an effective sovereign authority in society other than in the person of an absolute monarch, i.e. in a real, physical person. This was the only way to ensure the unity of the body politic.

Hobbes' notion of sovereignty flows logically from his contract theory. The power of the sovereign is absolute, because he is the bearer of the absolute natural rights of the citizens. The sovereign power is indivisible. "For what is it to divide the power of a commonwealth, but to dissolve it; for powers divided mutually destroy each other"<sup>6)</sup>. The authority of the sovereign is unlimited, because if there is any other power in a commonwealth which can limit in any way the authority of the sovereign, that power will indeed be the true sovereign.

As the sovereign was created to provide for the safety of the people, it was his work to make and interpret the laws of the commonwealth and to punish breaches  
of.....55

6) Leviathan, p.149.



of the law. In this case it was clear that the sovereign had to be above the law and that he could not be impeached in his own courts or put to death for actions in his capacity as sovereign. The sovereign was the soul of an artificial monster, the commonwealth, or Leviathan. And it is because of this artificiality that Hobbes thought that the use of the mathematical method was appropriate in this respect.

The sovereign is subject to the laws of nature<sup>7)</sup> because such laws are divine and cannot be abrogated by any man or commonwealth. Only to God need the sovereign render an account of how he maintains the laws of nature.<sup>8)</sup>

Other attributes of sovereignty as understood by Hobbes, can be summarized as follows: to make and abrogate laws; to determine war and peace; to judge all controversies; to choose all counsellors, ministers, magistrates and officers; to reward with riches or honour and to punish with corporal or pecuniary punishment every subject according to the law made by him; to give titles of honour. These rights of sovereignty are incommunicable and inseparable. The power to coin money and to dispose of the estate and persons of infant heirs and all other statute prerogatives may be transferred by the sovereign.

It is clear that a tremendous amount of power is concentrated in the person of Hobbes' sovereign. Not only is he the representative of everyone of the subjects of his commonwealth, but he also holds both the legislative and executive powers. In other words, the sovereign is the people, the legislator and the government combined in one physical person.

"The people is something that is one, having one will, and to whom one action may be attributed; none of

these.....56

7) Leviathan, p.149.

8) Ibid., p.153.

these can properly be said of a multitude. The people rules in all governments. For even in monarchies the people commands; for the people wills by the will of one man; but the multitude are citizens, that is to say, subjects... And in a monarchy the subjects are the multitude, and (however it seem a paradox) the king is the people".<sup>9)</sup> This is the way in which Hobbes identifies the king with the people.

We have seen that Hobbes favours an unlimited sovereign authority. At the same time it must be borne in mind that the main duty of Hobbes' sovereign is to provide for the peace and safety of the people. As soon as the sovereign fails to preserve the peace, the subject is no longer bound to obey him. If a monarch surrender to a victor, his subjects are also delivered from their obligation and become obliged to the victor.

We should also remember that there is one natural right which no individual ever transferred to the sovereign and that is the right to defend one's own body. Therefore no subject is bound to obey a king who commands him to kill or harm himself. No man can be obliged to accuse himself. The subject is also entitled to disobey the sovereign's command to kill somebody else and he also has the right to resist efforts by the sovereign to arrest him and to attempt to escape when held in prison.

If a subject have a controversy with his sovereign, he has the same liberty to sue for his right as if it were against a subject before such judges as are appointed by the sovereign.

For the rest the liberty of the subject depends on the silence of the law. In cases where the sovereign has prescribed no rule, the subject has the liberty to do or forbear according to his own discretion. Thus the

subject .....57

9) English works, vol.2, p.158.

subject has the liberty to buy and sell, and otherwise to contract with one another, to choose their own abode, their own diet, their own trade of life, and the like.

We may not resist princes who command us to do things which are contrary to God's laws. The only thing that a subject may do under such circumstances is to  
10)  
"go to Christ by martyrdom".

It should also be noted that no man has the liberty to resist the sovereign in defence of another man.<sup>11)</sup> The subject can apparently, according to Hobbes, only act as an individual vis-à-vis the sovereign. Here it is interesting to compare the position of Hobbes with that of the Vindiciae. According to the latter the people as a corporate body and an object of rights confronts the ruler. The individual is not allowed to resist the ruler as an individual, only the inferior magistrates may do so on behalf of the people. Whereas Hobbes visualizes the relationship between subjects and ruler as a relationship between physical individuals, the Vindiciae sees the relationship as one existing between a group, the people, and the ruler. Here the individual is not exposed to the arbitrary power of a ruler; no, he is shielded by the corporate power of the community of which he is a member.

Hobbes is one of the political theorists who dealt at considerable length with the subject of the law of nature. Both in De Cive and Leviathan he enumerated a great number of laws of nature. It will take too much space to enumerate them all here. Hobbes himself called them the dictates of right reason for the constant preservation of our life and members. They include such virtues as peacefulness, helpfulness, gratitude, equality, humility.....58

10) English works, vol.2, p.315.

11) Leviathan, p.104.

humility and equity. One of the laws of nature which Hobbes emphasized, is "that men perform their covenants made".<sup>12)</sup> In this way he gave a natural law foundation to his social contract. He summarized the laws of nature in the following words: "Do not that to another, which thou thinkest unreasonable to be done by another to thyself".<sup>13)</sup>

The laws of nature are reasonable, immutable, eternal, moral and divine. They need not be published or proclaimed. The laws of nature always oblige us in foro interno, that is, they bind us to a desire that they should take place; but in foro externo not always. In the state of nature, for instance, where nobody has sufficient security that others will observe the laws towards him, they are not binding in foro externo. One thus feels obliged to agree with Strauss "that there is no natural law prior to the establishment of civil society or independent of the command of the sovereign",<sup>14)</sup> although Warrender<sup>15)</sup> has some reservations on this score. Perhaps it would be<sup>a</sup> more fair statement of Hobbes' theory of natural law, to say that natural law existed even in the state of nature, but that it could only be enforced and could only give rise to obligation under circumstances of civil society where there is a sovereign authority to ensure the observance of the law of nature by everybody.

The sovereign should not contravene the laws of nature, but Hobbes provides no institution which will be competent to force the sovereign actually to observe these laws. It is thus left to the discretion of the sovereign himself.

Hobbes distinguishes between jus naturale, the right.....59

12) Ibid., p.71.

13) Ibid., p.126.

14) L.Strauss: What is political theory? Glencoe, 1959. p.175.

15) H. Warrender: The political philosophy of Hobbes: his theory of obligation. Oxford, 1957. pp.58-61.

right of nature, the liberty that every man has to use his own power as he thinks fit, to preserve his own life; and lex naturalis, or law of nature, which is a general rule based on reason, by which man is forbidden<sup>16)</sup> to do anything that is destructive of his life. Jus naturale is thus a liberty and lex naturalis an obligation.

When we come to positive, or civil law, we see that they are simply defined by Hobbes as the commands of the sovereign. The sovereign is the only one who makes laws in a commonwealth, consequently he is not subject to the civil laws, because the person who can make the laws, can also repeal them.

The law of nature and the civil law contain each other. It is the sovereign power that obliges men to obey the laws of nature. As every subject in a commonwealth has covenanted with another to obey the civil law, obedience to the civil law is part also of the law of nature. The purpose of all law is to limit the liberty of particular men so that they do not hurt, but assist one another.

Except for the law of nature, it belongs to the essence of all other laws that they should be made known to everyone who shall be obliged to obey them, by word or writing, or some or other act known to proceed from the sovereign authority. In other words, the law should not only be written and published but it should also bear signs that it proceeds from the will of the sovereign. All law, including the law of nature, may only be interpreted by the sovereign or by people appointed by him.

17)

Mabbott says that one of his main objections to

Hobbes.....60

16) Leviathan, pp.65-66.

17) Op.cit., p.15.

Hobbes, is that he makes society and law precede morality. This is indeed the case, for it is quite clear that Hobbes bases morality on law. According to him the civil laws are the rules by which the subjects can distinguish right and wrong. Right is what is in accordance with the law and wrong that which is contrary to the law. Laws are also the rules of just and unjust; only things contrary to the law are unjust.<sup>18)</sup> Thus the king, as the law-maker, is also the person who provides the basis for morality in society. Where there is no civil power to restrain men, there would be no right or wrong, justice or injustice.

Hobbes shows that the power of interpreting the word of God and the supreme civil power were united in Moses while he lived. Thereafter they were united in the high-priests until King Saul's time. By the election of Saul as King of Israel, the direct kingdom of God on earth was interrupted, but it is to be restored at the Second Coming. Until then, there exists no kingdom of God on earth, but just as in the time of Saul, the civil and spiritual authorities are united in the king.

Hobbes defines a church as "a company of men professing Christian religion, united in the person of one sovereign, without whose command they ought not to assemble".<sup>19)</sup> And as there is no power on earth to which all commonwealths are subject, there cannot be a universal church which all Christians are bound to obey.

The time between the Ascension of Jesus and the Second Coming, Hobbes divides into two periods: before and after civil sovereigns adopted the Christian religion. During the former of these two periods ecclesiastical power was with the apostles and those to whom the

Holy.....61

18) Leviathan, p.123.

19) Leviathan, p.211.

Holy Spirit was transmitted by the laying on of hands. They had, however, no coercive power, but they could teach and persuade people to believe in Jesus Christ and to prepare themselves for His Second Coming.

Under a Christian sovereign civil and religious authority could easily be reconciled, because the sovereign required obedience to civil law which contained all the laws of nature or of God. In a Christian Commonwealth, therefore, the church and religion are clearly subordinated to the sovereign. Hobbes could not tolerate a religion which afforded the subject direct access to an authority other than the lawful sovereign.

When one comes to the vital issue in political theory, namely the relation of the individual to the state, it may be fair to say that Hobbes regarded individuals as a multitude of colliding atoms, each of which could only be kept in its proper place by a superior power. Each individual stands in direct relation to the sovereign and no corporation or body politic may, without the express permission of the sovereign, stand between the individual and the sovereign. However, Hobbes did not at all like corporations in a commonwealth. "Another infirmity of a commonwealth" he said, "is...the great number of corporations, which are as it were many lesser commonwealths in the bowels of a greater, like worms in the entrails of a natural man".<sup>20)</sup>

The sovereign in any commonwealth is the absolute representative of all the subjects and therefore somebody else can be a representative of any part of them, only in so far as the sovereign allows it.

We encounter the same attitude in connection with  
private.....62

20) Leviathan, p.152. See also Tönnies: Thomas Hobbes. Stuttgart, Frommanns Verlag, 1925. p.267.

private property. All the land and its resources belong to the sovereign and private property was only that which the sovereign had declared to belong to an individual. The individual has the right to exclude others from his property, but not the sovereign. And in this regard, Hobbes makes a highly significant confession. "It is true," he remarks, "that a sovereign monarch, or the greater part of a sovereign assembly, may ordain the doing of many things in pursuit of their passions, contrary to their own consciences, which is a breach of trust and of the law of nature; but this is not enough to authorize any subject, either to make war upon, or so much as to accuse of injustice, or any way to speak evil of their sovereign; because they have authorized all his actions, and in bestowing the sovereign power, made them their own<sup>21)</sup>". From this passage it is abundantly clear that the individual is absolutely helpless in the presence of the sovereign. The sovereign is supposed to observe the law of nature in his dealings with the individual, but if he should fail to do so, the individual may not even complain.

Another aspect of the relation between individual and state in Hobbes' philosophy, is noted by Wolin, namely that the individuals are never fused into a real corporate unity. "Calculating, egoistic and alone even in society, Hobbesian man was poor political matter from which to generate the dynamics of power"<sup>22)</sup>. Individuals are only kept in a social state by the powerful presence of the sovereign. If he is removed, they relapse into a state of nature with war of all against all.

All the natural rights of the individual are absorbed in the artificial Leviathan. To allow the

individual.....63

21) Leviathan, p.116.

22) S.S. Wolin: Politics and vision. London, Allen & Unwin, 1961. p.274.



individual to act on his own as the judge of good and evil, is a doctrine repugnant to civil society. For a man living in a commonwealth, the law is the public conscience by which he has already undertaken to be guided.

Hobbes' conception of the nature of man which was based on his mechanical view, made it impossible for him to visualize that a people or group, could be formed spontaneously. The existence of the people as an autonomous corporate body was inconceivable to him.

His contract is consequently nothing more than an act of submission by every individual to an absolute ruler who undertakes no obligations towards his subjects. These subjects had neither the corporate cohesion, nor the bargaining power to keep the ruler to the limits of reasonable and just conduct. The magistratus inferiores of the Vindiciae chosen by the people and responsible to God to safeguard the laws and rights of the people, have no place in Hobbes' doctrine. Here it is up to the conscience of the monarch to observe the law of God and of nature. Nobody can tell him that he failed to do his duty.

Also the idea of sovereignty of law disappears from the scene. Hobbes' sovereign is the sole source of the law and is, as such, above law. The content of the law is not the most important aspect, but its source, the man who has the legitimate authority to make the laws, the monarch.

Finally all traces of pluralism are thoroughly removed from Hobbes' doctrine. No corporations may operate without the express consent of the sovereign. The result is that the individual stands isolated against an

absolute.....64

absolute and arbitrary sovereign whose word is law and whose authority nobody can question.

That such a political doctrine was absolutely foreign to the atmosphere of the Vindiciae need hardly be said.

CHAPTER 6.

THE POLITICAL PHILOSOPHY OF JEAN-JACQUES ROUSSEAU.

We have seen how, in the late Middle Ages, there existed in Europe many corporations and peoples each of whom enjoyed local autonomy. We have also seen how the Huguenot writers of the sixteenth century fought for the maintenance of this state of affairs by stressing the contractual arrangements between people and ruler, the sovereignty of law to which both parties were subject and the notion of pluralism whereby the various groups were recognized as subjects of rights.

These political conditions were gradually cleared away by the emergent sovereign state which sought to centralize all powers in the hands of a monarch who was regarded as the source of all positive law and consequently stood above the law. This position was increasingly justified by Bodin, Le Bret and Hobbes.

We have said that the ultimate validity of any political theory, depended on the conception of the nature of man. It is because Hobbes based his political doctrine on man as an egoistic, atomistic individual who has no compassion for his fellow-men, that we have to reject his solution for the relation between man and state however logical his argument may be.

We shall attempt to show that Rousseau had a much more adequate conception of man. Consequently he was able to restore to their former glory those principles of freedom which were characteristic of the late Middle Ages. Men in society were able to govern themselves and Rousseau rejected the idea of a personal sovereign. Instead of a personal sovereign, sovereignty of law should rule supremely in an orderly community. "Car l'impulsion du seul appétit est l'esclavage et

l'obéissance.....66

l'obéissance à la loi qu'on s'est prescrite est liberté<sup>1)</sup> writes Rousseau. In short, Rousseau attempted to revive all those enduring principles for which the Huguenot theorists fought.

In contrast to Hobbes, Rousseau was very much dismayed by the absolute sovereign state which displayed some of its worst features during his life-time. The actual state of affairs under which people lived, especially in France, was totally unacceptable to him and he sought a political theory which could serve as a sound basis for a form of state in which man will be able to enjoy as much freedom as possible.

Before dealing with the details of Rousseau's political theory, we should first have a look at the sources of his thought and mention the writers who influenced him. It need hardly be emphasized that Rousseau is a controversial figure in political philosophy and even about his antecedents there is some difference of opinion. One encounters one such difference of opinion when one considers the influence of Geneva on Rousseau's political thought. On the one hand Jules Vuy states that "the central thought of Rousseau is, without any possibility of doubt, borrowed from the Liberties promulgated at Geneva by the Prince-Bishop, Adhémar Fabri, in 1387"<sup>2)</sup>. Vaughan<sup>3)</sup> is also of the opinion that the free institutions and the keen civic life of Geneva as a whole must have made a deep impression upon the thought and imagination of Rousseau. With this opinion<sup>4)</sup> Derathé agrees, but he also says that it is

elsewhere.....67

- 1) Contrat social, Livre 1, Chap.viii. (Vaughan, Political writings of Rousseau. vol.2, p.36.)
- 2) Origine des idées politiques de Rousseau. Genève, 1889. p.11. (Quoted by Vaughan, vol.2, p.4.)
- 3) Op.cit., vol.2, p.5.
- 4) R. Derathé: Jean-Jacques Rousseau et la science politique de son temps. Paris, 1950. p.22.

elsewhere that we must look for the sources of Rousseau's political thought. He quotes Spink as saying that the most that one can say is that Rousseau believed at a certain time, that he found in the institutions of Geneva the realization of his ideal. However, if one puts his theory in its rightful place in the great current of speculative thought of the 18th century, one does not see a Genevan brochure anymore. Vaughan agrees with Spink<sup>5)</sup> that the real masters of Rousseau are Hobbes, Grotius, Pufendorf and Barbeyrac and, above all, Locke, Montesquieu and Plato. To this list should be added the names of Althusius, Barlamaqui, Malebranche and the Encyclopaedists.<sup>6)</sup>

In our next chapter we shall compare the political philosophy of Rousseau with that of Hobbes. We shall therefore not discuss the influence of Hobbes on Rousseau at this stage. Suffice it to say that it is known that Rousseau was well-acquainted with De Cive, although no evidence could be found that he ever read Leviathan.<sup>7)</sup>

The influence of Pufendorf is very important. Pufendorf was the writer who countered Hobbes' 'civil' or 'public person' in the form of a physical person, with the doctrine that the state itself is a public person constituted by the wills of natural persons. A nation is just as much a person as one man or a council of men and such a moral person may be sovereign. This moral person - the whole body of the people - has to transfer its sovereignty to some particular person or persons who are to exercise the right of rule. Rousseau thus got the notion of his "volonté générale" from Pufendorf although he did not follow him as far as his second contract is concerned. He only went as far as

Pufendorf's.....68

5) Op.cit., vol.2, p.8.

6) Rousseau et Genève, pp.89-90 (Quoted by Derathé: Op.cit., p.22.)

7) Derathé: Op.cit., p.104.

Pufendorf's first contract, i.e. that of establishing a sovereignty and could not agree that that sovereignty should be transferred to anybody. In other words he denied that there should be a contract of government.

That Rousseau was acquainted with the political theory of Althusius is evident from a passage in Lettre vi of his Lettres écrites de la Montagne.<sup>8)</sup> Many of the most important features of the political philosophy of Rousseau we also find in the Politica methodice digesta of Althusius. Derathé said that "Althusius nous paraît n'avoir été seulement le précurseur de Rousseau,<sup>9)</sup> mais aussi son maître". For Althusius sovereignty was an inalienable right which the people could no more cede than an individual could cede his own life. Any regime in which the people did not exercise the sovereignty he regarded as tyrannical. He also said that the government of a people is only the mandatory of the people to whom it owes its power and from whom the people can withdraw their power whenever they think fit. He emphasized the sovereignty of law and stated that the law of nature should be embodied in fundamental law. Law is created by homogeneous communities. Although his opinion of the nature of man is not as idyllic as that of Rousseau, he had nevertheless a strong belief in the force of sympathetic emotions among men, which is also a characteristic of the philosophy of Rousseau. The state of Althusius is made up of a number of corporations which existed prior to it and it is in connection with this aspect of his doctrine<sup>10)</sup> that Vaughan doubted that he could have had much influence on Rousseau. Vaughan forgot, however, that, although Rousseau said that he dealt with a state,

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8) Vaughan: Op.cit., vol.2, pp.205-206.

9) Op.cit., p.99.

10) Op.cit., vol.2, p.7.

what he actually described is a very small state, indeed a city-state, and that the formula of his social contract could be applied equally well to the formation of a small unit like the clan, the village or the city. To me it seems that there is no essential discrepancy between Althusius' and Rousseau's notion of contract. When we consider that Rousseau did not complete his projected treatise on political institutions, it would not be unfair to regard his "state" as described in his Contrat Social as a corporation and his confederation, which he just mentioned briefly, as analogous to what Althusius called a "state". However, this is an interpretation that will be discussed at greater length later. I rather feel inclined to agree with Derathé that Rousseau owed much to Althusius.

The influence of Plato and Malebranche can be discerned clearly where Rousseau in his Discourse on political economy identified virtue with the conformity of the particular wills with the general will, and the general will with the will of God.<sup>11)</sup> The influence of other writers will be dealt with in the course of our examination of the various aspects of the political theory of Rousseau.

For a good understanding of Rousseau's doctrine, it is essential to pay some attention to his method. We have already seen that Hobbes rejected the historical method and applied the mathematical method to political problems. The result was that his treatment of political theory was utterly mechanistic, materialistic and rationalistic. The commonwealth was conceived as a huge machine and human individuals as colliding atoms.

Although Rousseau also rejected the historical method, he did not relapse into the barren mechanism of

Hobbes..... 70

11) Vaughan: Op.cit., vol.1, pp.243 and 248.

Hobbes. Like Plato he realized that man's nature only becomes intelligible when we consider his social life, when he is considered in his totality and not as an isolated individual. He also realized that by means of a purely mathematical approach one will never be able to penetrate to the real nature of man who is a free and complex being, totally different from physical objects and animals. Man's environment, the political framework in which he lives, should be of such a nature that man will be able to develop his best qualities.

Already in his Discours sur l'inégalité Rousseau writes: "Il ne faut pas prendre les recherches, dans lesquelles on peut entrer sur ce sujet, pour des vérités historiques; mais seulement pour des raisonnements hypothétiques et conditionnels; plus propres à éclaircir la nature des choses qu'à en montrer la véritable origine..."<sup>12)</sup> His method is also rational but not mechanistic and mathematical. He is not concerned with what is, or was, but only with what ought to be. Man is able to find the knowledge of what ought to be by genuine self-examination.<sup>13)</sup> This approach is particularly noticeable in the Contrat Social which should be regarded as an abstract description of an ideal state. For Rousseau the true method is 'to test the fact by the principles of Right' and not, like Grotius, according to him, invariably does, to infer Right from the fact.<sup>14)</sup> This hard core of abstraction in the theory of Rousseau, Vaughan<sup>15)</sup> ascribes to the influence of Hobbes and Locke. In his later writings such as his Projet de Constitution pour la Corse (1765) and Considérations sur le Gouvernement de Pologne (1772), he made use of the historical method. Here he showed a determination to.....71

12) Vaughan: Op.cit., vol.1, p.141.

13) Cf. E. Cassirer: The question of Jean-Jacques Rousseau. New York, Columbia univ. press, (1956.) p.50.

14) Vaughan: Op.cit., vol.1, p.289.

15) Ibid., p.77.



to master all the known facts of the case and to interpret them in the light not of any preconceived theory but of expediency and practical possibility. This change of approach was due to the influence of Montesquieu who taught that the state is a natural and largely unconscious product and that not ideas, but circumstances are the dominant factor in its growth. However, as far as his purely political theory is concerned, we should always bear in mind that his approach is abstract but not mathematical.

In other words, he did not describe a concrete, historical political system, but he enunciated in a rational way the principles on which a legitimate state should be erected. His approach was not mathematical, because he realized that men were creatures of flesh and blood with both intelligence and feeling and not mere mechanical atoms. Ernst Cassirer has put this position of Rousseau very neatly. "The mathematical-logical spirit of the seventeenth and the eighteenth centuries," he writes, "had converted nature into a mere mechanism: Rousseau once again discovered the soul of nature".<sup>16)</sup> Indeed, in our opinion not only his approach to politics but also his method constitute a reply to the barren absolutism of Hobbes and the principles on which it was based. In our next chapter we shall deal with this question in more detail.

In his Discours sur l'inégalité and in a fragment, L'État de guerre, Rousseau gives us a fairly complete picture of what he considers to be the state of nature. Right at the beginning of the Discours, he makes it perfectly clear that he does not necessarily regard the state of nature as a historical epoch in the development of man; it may never have existed. Nevertheless,

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16) Op.cit., p.106.

it is necessary to have an accurate notion of such a state in order to judge the present state of man properly.

Man in the state of nature has two natural propensities which are prior to reason, namely one which interests us deeply in our own welfare and preservation, and the other which excites a natural repugnance at seeing any other sensible being, and particularly one of our own species, suffer pain or death. Comparing man with animal, Rousseau points out that whereas the animal is governed solely by nature and its instinct, man can act as a free agent. Man has the power to will, or rather to choose and these spiritual acts of man cannot be explained by means of mechanical laws. Moreover the whole human species has the capacity to perfect itself.

Human understanding owes much to the passions which in turn have their origin in our wants. The savage man only experiences physical needs, such as a desire for food, a female and rest. The only evils that he fears are pain and hunger. The savage has no fear of death, for in the state of nature he cannot know what it is to die. It is only after he has left the state of nature, that man acquires a knowledge of death and its terrors. It is wrong to assume that families lived under one roof in the state of nature, for in that state men had neither houses, nor any kind of property whatever. The sexes united as accident, opportunity or inclination brought them together and they parted with the same indifference.

It is also wrong to conclude with Hobbes, that because man has no idea of goodness in the state of nature, he must be wicked. On the contrary, the desire of self-preservation in man is tempered by compassion which precedes any kind of reflection. From this

quality alone flow all the social virtues. Compassion is a natural feeling and in the state of nature it takes the place of laws, morals and virtues.

As far as love is concerned, it consists of physical and moral ingredients and man, in the state of nature, is only capable of the physical part of love and is thus subject to fewer and less violent fits of passion than in society. Rousseau comes to the conclusion that the majority of the passions has a social origin and does not exist in the state of nature. In conclusion, he summarizes his view of the state of nature as follows:-

"Concluons qu'errant dans les forêts, sans industrie, sans parole, sans domicile, sans guerre et sans liaison, sans nul besoin de ses semblables, comme sans nul désir de leur nuire, peut-être même sans jamais en reconnaître aucun individuellement, l'homme sauvage, sujet à peu de passions, et se suffisant à lui-même, n'avait que les sentiments et les lumières propres à cet état; qu'il ne sentait que ses vrais besoins, ne regardait que ce qu'il croyait avoir intérêt de voir, et que son intelligence ne faisait pas plus de progrès<sup>17)</sup> que sa vanité".

In "L'État de guerre", Rousseau shows that a state of war can only come about in a civil state and he reproaches Hobbes for importing the vices of civilization into the state of nature. The state of war is not at all natural to the human species. War actually originates from peace, or at least from the precautions which men take in order to ensure a durable peace. Man would indeed be a strange animal, exclaims Rousseau, if he believed that his good existed in the destruction of his species. Just as little as a state  
of.....74

17) Discours sur l'inégalité. (In Vaughan, vol.1, pp.165-166.)

of war is natural to man, is a feeling of sociability natural to man. Rousseau rejects the Aristotelian doctrine that man is by nature a social being.<sup>18)</sup> He also rejects the notion of a general society of mankind. If sociability is inherent to human nature, all the societies which history offers, are also natural and their condemnation will be a condemnation of nature itself<sup>19)</sup> and the human ill will be without remedy.

The natural inequality of man which is hardly noticeable in the state of nature, increases tremendously in the social state. In the state of nature, man lived a solitary life and there was thus no common basis of comparison of the abilities of individuals. It is only in a social state that man can compare his own power and abilities with those of others and that inequality becomes pronounced.

<sup>20)</sup> Hubert indicates that the state of nature has many features in common with the doctrine of a primitive Eden; the fall of man having its counterpart in the depravation caused by society, but there is an important difference: the Church says that by the fall man becomes naturally and inevitably bad, incapable to escape from his state of depravation, except by a supernatural act of divine grace. Rousseau, on the other hand, says that man is bad, he ~~has~~ fallen but not by divine decree. God created him and God desires that he should remain as he was in the Eden of the state of nature. From this state man has fallen as a result of the error he committed in allowing himself to be organized in an artificial state of society.

How did society originate? Rousseau gives various

answers.....75

- 18) E.Cassirer: Rousseau - Kant - Goethe.Princeton,1945.p.27  
19) R. Hubert: Rousseau et l'Encyclopédie.Paris,1928.p.92.  
20) Op.cit., p.93.

answers to this question. In his Discours sur l'inégalité he says clearly: "le premier qui ayant enclos un terrain s'avisa de dire, Ceci est a moi, et trouva des gens assez simples pour le croire, fut le vrai fondateur de la société civile"<sup>21)</sup>. Here he ascribes the origin of civil society to the institution of private property. However, in an Essay on the origin of languages, he offers, to my mind, a more plausible explanation. He says that not physical needs, but moral needs, i.e. what men want of each other, the satisfactions which they cannot obtain without living together, make a people out of a scattered population. Finally in the Contrat social (1,6) he says: "Je suppose les hommes parvenus à ce point où les obstacles qui nuisent a leur conservation dans l'etat de nature l'emportent, par leur résistance, sur les forces qui chaque individu peut employer pour maintenir dans cet état"<sup>22)</sup>. These various explanations are not necessarily contradictory; they should, I think, rather be regarded as complementary.

One thing should, however, be clearly understood and that is that Rousseau allows for a long development of man from the state of nature to an unorganized state of society which eventually led to a state of war. This interval of 'a multitude of ages' between the state of nature and the inception of the state of Rousseau, is often ignored by commentators on his political philosophy. Most of the second part of the Discours sur l'inégalité is devoted to a description of how man emerged from the state of nature into a state of society prior to the establishment of the state. Commentators complain that no mention is made of this interval in the Contrat social. They forget that whereas Rousseau tries

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21) Vaughan: Op.cit., p.169.

22) Ibid., vol.2, p.32.

in the Discours to explain how the present situation of human inequality and bondage came about, in the Contrat social he is simply trying in an abstract way to indicate how an ideal state should be established. In this case he is thus not concerned with possible historical or logical antecedents of an unsatisfactory state of affairs; he is constructing a new ideal state.

Apart from a description of the emergence of the state of society, the second part of the Discours also contains criticism by Rousseau of the contract theories that were held by earlier writers. He rejects unconditional surrender to an absolute ruler. Such voluntary subjection he regards as slavery and asserts that savage man would prefer the most turbulent state of liberty to the most peaceful slavery. Paternal authority from which some authors have derived absolute government, is far too mild to give rise to the ferocious spirit of despotism. He also disagrees with Pufendorf who said that we may divest ourselves of our liberty in favour of other men, just as we transfer our property from one to another. Rousseau easily demolishes this argument by pointing out that the property one alienates becomes quite foreign to one and one cannot suffer from the abuse of it. This, of course, does not hold for one's liberty. Moreover, the right of property being only a convention of human institution, men may dispose of what they possess as they please. This, however, is not the case with such essential gifts of nature as life and liberty. It would be an offence against both reason and nature to renounce our life and liberty at any price whatsoever. In other words, Rousseau here is convinced that the individual cannot alienate his liberty without betraying his human nature.

Without going into much detail, Rousseau then briefly outlines what he regards as a proper contract of government.....77

government, namely a reciprocal contract between the people and the rulers chosen by them. By this contract both parties bind themselves to observe the laws therein expressed. This is for him the only acceptable explanation of the establishment of government, but he does not waste any time to point out the unavoidable abuses of such a constitution. Gradually legitimate power was converted into arbitrary power and things deteriorated to such an extent that all private persons returned to their first equality, because they were nothing and had no law but the will of their master, and their master no restraint but his passions.<sup>23)</sup> The contract of government was thus completely dissolved by despotism.

Not satisfied with this version of the contract theory, Rousseau attempts in his Contrat social to base civil society on a more secure foundation. What he was looking for, he formulates as follows: "Trouver une forme de association qui défende et protège de toute la force commune la personne et les biens de chaque associé, et par laquelle chacun, s'unissant à tous, n'obéisse pourtant que à lui-même, et reste aussi libre qu'auparavant? Tel est le problème fondamental dont le Contrat social<sup>24)</sup> donne la solution".

Once more he rejects paternal authority, pointing out that this authority only lasts as long as the children need the father for their preservation. As soon as the child reaches years of discretion he is the sole judge of the proper means of preserving himself, and thus becomes his own master. Next he makes it perfectly clear that force can never create right and that we are obliged to obey only legitimate powers. His main objection against the doctrine that might is right,

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23) Discours sur l'inégalité. (Vaughan, vol.1, p.194.)

24) In Vaughan, vol.2, p.31.

seems to be directed against the relativity of the concept of right in such an assumption. He thus seems to assume that right ought to be an immutable and universal concept and in this light his position can be interpreted as a defence of the law of nature.

Cassirer confirms this view where he writes that Rousseau "never renounced the idea of "objective" truth<sup>25)</sup> and the demands of an "objective" morality".

He deals in considerable detail with the subjection of individuals to a king. He rejects the idea that a people can alienate itself. A man who sells himself as a slave, does so at least for his subsistence; but for what does a people sell itself? Far from furnishing his subjects with their subsistence, a king gets his own from them. To say that a people gives itself gratuitously to a ruler, is to say what is absurd and inconceivable; such an act is the act of madmen and consequently null and void. Even if a man could alienate himself, he could not alienate his children. It would therefore be necessary, in order to legitimize arbitrary government, that in every generation the people should be in a position to accept or reject it. He comes to the inescapable conclusion once more that renunciation of liberty is incompatible with the nature of man and that to remove all liberty from man's will is to remove all morality from his acts. Any convention which sets up, on the one side, absolute authority, and, on the other, unlimited obedience, is empty and contradictory.

From the foregoing, it should by now be clear that Rousseau would tolerate neither a contract of submission, nor one of government. His contract is simply one of association. In this respect Rousseau undoubtedly learned much from Hobbes and Pufendorf. The latter  
advocated.....79

25) The question of Jean-Jacques Rousseau. p.128.



advocated two types of contract: one for establishing sovereignty and another for government. Rousseau's contract approximates the first contract of Pufendorf. He also seems to agree with Pufendorf that a people does not exhaust itself completely after concluding a contract but continues to exist as such. However, he could not agree with Pufendorf that a people can transfer its sovereignty to a particular person or body of persons. The general will of the community can never be identified with the will of any particular man, or any part of the entire society. Rousseau rejects unequivocally any idea of representation. This doctrine, according to him, can too easily be used as a cover for the usurpation of sovereignty by a government. Rousseau's contract is thus a pact between individuals for the formation of an association. Derathé suggests that it could also be interpreted as "une promesse réciproque entre le corps du peuple, considéré comme une personne morale, et les particuliers, autrement dit d'un engagement mutuel entre le souverain et ses sujets".<sup>26)</sup> With this interpretation, although it must be admitted that it brings the contract theory of the Contrat social into line with that mooted in the Discours, I cannot agree. It must be remembered that the people is only constituted as a moral person as a result of the social contract. It does not exist in that capacity prior to the pact of association. What is more, Rousseau never contemplated any antitheses between individual and society as is suggested by Derathé's interpretation. The individual is part and parcel of the people and can only exercise his liberty as a member of a community. There is thus no essential conflict between the sovereignty of the people seen as a moral person, and the freedom of the individual.

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26) Op.cit., p.223.

The clauses of Rousseau's contract are reduced by himself to a single one: "l'alienation totale de chaque associé avec tous ses droits à toute la communauté".<sup>27)</sup> This is necessary in order to establish a condition of equality before the law. As each gives himself absolutely, the conditions are the same for all. Each individual, in giving himself to all, gives himself to nobody and as there is no fellow citizen over whom he does not acquire the same right as he yields others over himself, he gains an equivalent for everything he loses and in addition the force of the whole community for the preservation of what he has. The social pact thus substitutes for the relation between man and man, the relation between citizen and the law. Although man now has to live in society with his fellow-men, he runs no risk of falling under the domination of another man. The social pact safeguards him against all personal dependence. The individual is only subject to the law and to no human being.

According to Rousseau a free man does not, and need not, obey any other will but his own. It follows thus that the general will, the will of the moral person which results from the pact of association, the acts of which are the laws, cannot be foreign to any citizen, but should be his own proper will. This is the way in which Rousseau thinks that he has solved the problem of finding a form of association in which each person in uniting himself with others, obeys nobody but himself.

The act of association performed by individuals, creates a moral and collective body, composed of as many members as the assembly contains voters and receiving from this act its unity, its common identity, its life  
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27) Vaughan: Op.cit., vol.2, p.33.

and its will. This public person is the sovereign. As this sovereign owes its existence to the sanctity of the contract of association, it can never do anything derogatory to the original contract, for instance, to alienate any part of itself, or to submit to another sovereign. On the other hand, as the sovereign is being formed wholly of the individuals who compose it, it cannot have any interest contrary to theirs. Consequently the sovereign power need not give any guarantee to its subjects, because it is inconceivable that the body politic should wish to hurt all its members. It is, however, possible that an individual may have a particular will as a man, contrary to the general will which he has as a citizen. It is therefore necessary that whoever refuses to obey the general will, shall be compelled to do so by the whole body. To use Rousseau's own words: "ce qui ne signifie autre chose sinon qu'on le forcera d'être libre". By compelling the individual to obey the general will, the body politic only forces him to be free, to act as a free citizen. This is indeed one of the key phrases in Rousseau's political theory and we shall come back to it in a later chapter. Here we just want to state that according to Rousseau the individual can only enjoy freedom in a social set-up wherein the general will of the people is sovereign and that anybody who, for selfish reasons, refuses to conform to the general will, destroys the conditions under which he can be free.

Rousseau's sovereignty is inalienable and the sovereign cannot be represented except by himself. The sovereign power, however, may be transmitted, but not the will. The general will alone can direct the state according to the object for which it was instituted, namely the common good. For the same reason sovereignty

is also indivisible. The sovereign power is also absolute. "Comme la nature donne à chaque homme un pouvoir absolu sur tous ses membres," says Rousseau, "le pacte social donne au corps politique un pouvoir absolu sur tous les siens..."<sup>28)</sup> What this phrase actually means, is that the authority of the body politic over its members cannot be challenged by any other authority.

Rousseau acknowledges some limits, or rather some conditions on his sovereign power. These conditions can be interpreted as attempts by Rousseau to subject the ultimate authority in his state to the precepts of the law of nature. Although the subject is obliged to render such services to the state as the sovereign demands, the sovereign is obliged on his part to observe the law of reason and the law of nature and he cannot demand anything from his subjects that is useless to the community. Each man alienates by the social pact only such part of his powers, goods and liberty as is important for the community to control; the sovereign, however, being the sole judge of what is important. The general will to be true to itself, must be general both in its essence and object; it must come from all and apply to all. When it has a particular object it is no longer the general will and consequently ceases to be sovereign.

Derathé is of opinion that the law by virtue of the equality which it establishes among all the citizens, "n'a pas uniquement pour but de les mettre à l'abri des violences et des injures qu'ils (les citoyens) peuvent se faire mutuellement, mais son rôle véritable, sa fonction primordiale, c'est de mettre des bornes au pouvoir souverain. ...Sans doute le souverain est supérieur aux lois, puisqu'il en est et reste toujours maître de les.....83

28) Contrat social. (In Vaughan, vol.2, p.43)

les abroger, quand il lui plaît. Mais si le souverain fait des lois, il ne peut par contre faire que des lois".<sup>29)</sup>  
This simply means that the laws of the sovereign are by nature general and that the sovereign is thus not in a position to discriminate between its individual subjects.

We have seen that Rousseau regards sovereignty as indivisible. The sovereign power may, however, be transmitted. The legislative power belongs only to, and can be exercised only by the people. The government is an intermediate body set up between the subjects and the sovereign, charged with the execution of the laws. There is no contract of government; it is simply a commission, an employment in which the rulers, mere officials of the sovereign, exercise in their own name the power transmitted to them by the sovereign. It stands to reason that the sovereign is free to limit, modify and recover the power at any time it pleases. The government is thus at all times subordinate to the sovereign.

To us it seems to be clear that Rousseau also intends the sovereign to be subject to the law of nature. We have seen above that he says that the sovereign cannot demand from its subjects anything that is useless to the community, for it is against the law of nature that anything can occur without a cause. Observance of the law of nature is thus tacitly implied. The following passage clearly indicates that the general will is bound to observe the law of nature in its actions: "Ce qui est bien et conforme à l'ordre est tel par la nature des choses et indépendamment des conventions humaines. Toute justice vient de Dieu, lui seul en est la source; mais si nous savions la recevoir de si haut.....84

29) Op.cit., p.356.

haut, nous n'aurions besoin ni de gouvernement ni des lois. Sans doute, il est une justice universelle émanée de la raison seule; mais cette justice, pour être admise entre nous, doit être réciproque...Il faut donc des conventions et des lois pour unir les droits aux devoirs et ramener la justice à son objet".<sup>30)</sup> In other words, Rousseau accepts the existence of a divine and rational justice which is nothing else but natural law, but that justice, he contends, can only become effective among men when it is embodied in conventions and laws. The general will which has an ethical end, cannot fail to incorporate the precepts of the law of nature in its laws.

In his Lettre à d'Alembert Rousseau writes in connection with authority which is superior to the sovereign authority: "J'en admet trois seulement. Premièrement l'autorité de Dieu, et puis celle de la loi naturelle qui dérive de la constitution de l'homme, et puis celle de l'honneur plus forte sur un coeur honnête que tous les Rois de la terre".<sup>31)</sup> The social contract may no more violate the law of nature than particular contracts may infringe the positive laws.

<sup>32)</sup> It is wrong to say, as Vaughan does, that Rousseau rejects the idea of the law of nature. If he indeed did this, he would have deprived his social contract of every moral sanction. "On the other hand," writes Cassirer, "where a truly legitimate constitution rules - that is, where law and law alone is recognized as sovereign - a limitation on sovereignty is self-contradictory. For here the question of quantity, of the mere extent of power, loses its significance; only its content matters, and this content admits of no "more"

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30) Contrat social. (In Vaughan, vol2, p.48.)

31) Quoted by Derathé: Op.cit., p.156.

32) Vaughan, vol.1, p.444.

or "less". The law as such possesses not limited but absolute power; it commands and demands unconditionally".<sup>33)</sup> If the general will thus embody the law of nature as we think it does, its sovereignty is indeed unlimited.

Rousseau's conception of the law of nature as expressed at various places throughout his writings can be reconstructed as follows: Although man is reasonable by nature, he only possesses this gift as a potentiality in the state of nature. As the law of nature is rational, man is thus not capable of observing it in the state of nature. However, even in the state of nature, Rousseau believes that man has two sentiments prior to reason, namely self-preservation and compassion or pity. These two sentiments form the roots of the precepts of the law of nature. In the long interval which Rousseau places between the state of nature and the conclusion of the social pact, man gradually loses "la stupidité des brutes" and acquires some rudimentary idea of mutual engagements and the advantage of fulfilling them. At the conclusion of the social pact, the law of nature which in the state of nature was only instinct and compassion, becomes justice and reason. The law of nature thus only becomes of force in the civil state. In this sense it is not anterior to the civil law, but this does not prevent it from being superior to the civil laws.

This interpretation explains why Rousseau can say in L'État de guerre that the law of nature is not only written in human reason but that it is also "gravée dans le coeur de l'homme en caractères ineffacables".<sup>34)</sup> He is referring to the two innate sentiments of man mentioned above. He sees natural law both as a rational and moral force.

Coming.....86

33) Op.cit., p.97.

34) Vaughan, vol.1, p.294. Cf. Calvin: Op.cit., ii.ii.12.

Coming to civil law, we see in the 6th letter of Lettres écrites de la Montagne that Rousseau defines it as "une déclaration publique et solennelle de la volonté générale <sup>35)</sup> sur un objet d'intérêt commun". This is only a restatement of the concept of law that we find in the Contrat social. An essential characteristic of civil law must be emphasized here, i.e. that it must be general. The law should consider subjects en masse and actions in the abstract and never a particular person or action. The law, in modern parlance, only lays down broad principles of policy affecting the whole body politic and leaves the details of the execution of these principles to the government who, however, is not entitled to do anything repugnant to these principles.

Law also has a moral content in Rousseau's political theory. It is <sup>to</sup> law alone that men owe justice and liberty. It is law which appeals to man to behave according to the dictates of his own right reason and not to be inconsistent with his own better self. A man is free though subject to the laws since they are but the register of his own will.

Rousseau definitely advocates the sovereignty of law. In his Lettre à Mirabeau (1767) he openly confesses to this ideal when he writes: "Voici, dans mes vieilles idées, le grand problème en politique...Trouver une forme de Gouvernement qui mette la Loi au-dessus de l'homme". <sup>36)</sup> This was also one of the main principles of the Vindiciae, namely that law is just not because it derived from a certain source, but because its content is just. This view was foreign to the philosophy of Hobbes. According to him law was just because it came from the right source, namely the will of the sovereign. <sup>37)</sup>

As Ernst Cassirer rightly points out the essential.....<sup>87</sup>

35) Ibid., vol.2, p.201.

36) Vaughan: Op.cit., vol.2, p.160.

37) The question of Jean-Jacques Rousseau. Columbia Univ. press. 1956. p. 62.



tial purpose of Rousseau's political theory is to place the individual under a law that is universally binding, but this law is to be shaped in such a manner that every shadow of caprice and arbitrariness disappears from it. He virtually subordinates politics to an ethical imperative.

Vaughan confirms this view when he says that Rousseau abandoned the effort of many of his predecessors to make politics wholly independent of ethics.<sup>38)</sup> It is Rousseau's conviction that without an organized society there can be no such thing as morality for man. For him the moral sense, the sense of duty and obligation, is the creation of the general will. The moral sense, the sense of duty to others, begins only with the foundation of the state. For Rousseau the state definitely has an ethical purpose. In his Confessions he asks himself: "which is the form of government fitted to shape the most virtuous, the most enlightened, the wisest, and, in short, the 'best' people, taking that word in its noblest meaning?"<sup>39)</sup> Cassirer also points out that Rousseau "did not inquire into happiness or utility; he was concerned with the dignity of man and with the means of securing and realizing it"<sup>40)</sup>

Rousseau states quite definitely in Economie politique that every man is virtuous when his particular will is in all things conformable to the general will.<sup>41)</sup>

During the earlier part of his career, when he was still under the influence of the Encyclopaedists, Rousseau seemed to agree with Bayle that morality was a sufficient power in its own right to hold men to their duties. He thought that men in association could do all that is required for the common good. Meanwhile both

Pufendorf..... 88

38) Vaughan: Op.cit., vol.1, p.41.

39) Confessions, Livre ix (near the beginning).

40) Op.cit., p.71.

41) Vaughan: Op.cit., vol.1, p.250.

Pufendorf and Montesquieu, following in the footsteps of Plato, were of the opinion that no civil society could be maintained without religion. It was under the influence of these writers that Rousseau in his first version of the Contrat social admits in his chapter entitled The Legislator that religion has some use in giving to the moral bond an internal force. Remembering what he learned from Hobbes, he fears that if religion is not taken under the state, its devotees may make themselves a separate power in the society and cause disunion and war. This opinion is expressed in the first of the Lettres écrites de la Montagne. In the Contrat social he also expresses the opinion that "le Christianisme est une religion toute spirituelle, occupée uniquement des choses de ciel; la patrie du chrétien n'est pas de ce monde"<sup>42)</sup>. He has a poor view of Christians as citizens and says that they are made to be slaves and that they do not mind, because this short life counts for too little in their eyes.

The subjects in a state established by the social contract, owe the sovereign an account of their opinions only in so far as they matter to the community. Now, Rousseau is convinced that it matters very much to the community that each citizen should have a religion, because that will make him love his duty. It is therefore expedient that the sovereign should fix the minimum content of a purely civil religion which will simply include "l'existence de la Divinité puissante, intelligente, bienfaisante, prévoyante et pourvoyante, la vie à venir, le bonheur des justes, le châtement des méchants, la sainteté du Contrat social et des lois: voila les dogmes positifs. Quant aux dogmes négatifs,<sup>43)</sup> je ne les borne à un seul: c'est l'intolérance".

Rousseau.....89

42) Ibid, vol.2, p.130

43) Contrat social (In Vaughan, vol.2, p.131.)

Rousseau has simply extracted the essentials from the Christian religion and added to it the sanctity of the social contract and the laws. He does not concern himself with the Christianity of the churches for which he has little sympathy, but with the Christianity of the Gospels.

Over and above the articles of the civil religion, the citizen may have what opinions he pleases and it is not the business of the sovereign to take any notice of them. All religions should be tolerated so long as their dogmas contain nothing contrary to the duties of citizenship. Anyone, however, who has publicly recognized the dogmas of the civil religion, and behaves as if he does not believe them, shall be punished by death, because he has committed the worst of all crimes, that of lying before the law. Rousseau does not here advocate the suppression of freedom of opinion as Vaughan wrongly alleges.<sup>44)</sup> The citizen is only punished because he acts contrary to the duties to which he has openly subscribed; he is only punished for disloyalty.

Just as the Vindiciae contra tyrannos visualized no open conflict between the state and religion because both should help man to attain his salvation, so also Rousseau realized that the state cannot be indifferent to religion. Although it should at all times be tolerant as far as religious matters are concerned, it should at the same time, as an institution with an essentially ethical purpose, see to it that those tenets of religion which are conducive to the good conduct of the citizens are maintained in the state. In other words, he did not put up the state as God, but regarded it as an instrument which man should use to attain the destination for which God created him.

Although.....90

44) Ibid., vol.1, p.93.

Although there are many traces of pluralism in the writings of Rousseau his attitude to the existence of corporations in the state remains problematic. In Contrat social he says clearly that the same laws do not suit various provinces with diverse customs and situated in various climates and which cannot endure the same form of government.<sup>45)</sup> In other words, all laws of human society must have a reference to the needs, wants, and will of the people for whom they are valid.

As far as corporations are concerned, Rousseau admits in the Economie politique that every political society is composed of smaller societies of different kinds, each of which has its own interests and rules of conduct. All individuals who are united by a common interest whether transitory or permanent, also form societies which exist in the state.<sup>46)</sup> For its individual members the will of these particular societies is a general will, but in relation to the great society it is a particular will. When a conflict between such a particular will and the general will of the society occurs, the most general will is always the most just.

In the Contrat social he takes the opposite point of view. "Il importe donc", he writes, "pour avoir bien l'énoncé de la volonté générale, qu'il n'y ait pas de société partielle dans l'État, et que chaque citoyen n'opine que d'après lui".<sup>47)</sup> The only way in which one can reconcile these two conflicting attitudes, is to assume that in his Economie politique Rousseau was thinking of one of the large nation-states of his day, while in the Contrat social he was describing an ideal city-state. There is a lot of evidence that he had only a small city-state in mind throughout his Contrat social. It is

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45) Vaughan, vol.2, p.57.

46) Ibid., vol.1, pp.242-243.

47) Ibid., vol.2, p.43.

48)  
~~thus wrong~~ to decide with Vaughan that he destroys the freedom of association by excluding partial associations from his small state in the Contrat social. When all the citizens have a voice in the legislative assembly and if the state is so small that this is practically possible, I see no need for partial associations in the state. The individual citizen has every opportunity to represent his own interest in the highest legislative body of the state. Why should he want to associate with his fellow-citizens in a smaller, subordinate corporation?

Rousseau is very definitely in favour of a small state. "Another truth which our political philosophers seem not to have perceived at all", he says, "is that it is impossible for a state of great extent to be well-governed. I would say even more than this: a government could not possibly be good unless he in whom the sovereign power resides knows the name, the station, and the condition in life of every last one of the inhabitants of the State; for to be sovereign and to be charged with the happiness of others are synonymous".<sup>49)</sup> In the first version of the Contrat social Rousseau lays down as fundamental rule for every well-constituted and lawfully governed society that all the members could be easily assembled every time it was necessary. It follows from this that the State ought to be limited to one city at the most.<sup>50)</sup> In the final version of the Contrat social he stresses time and again the fact that the state should be small.

The type of state that Rousseau describes in his Contrat social is nothing more or less than a model corporation similar to those autonomous corporations that

flourished.....92

48) Vaughan, Vol.1, p.60

49) Corr.Litt., vol.2, pp.383-6. (Quoted by C.W.Hendel: Jean-Jacques Rousseau, moralist. Oxford U.P., 1934.p.94.)

50) Vaughan, vol.1, p.484.

flourished in the late Middle Ages, or to be more precise an independent city-state. His frequent references to the Greek city-states of Sparta and Athens bear witness of his admiration for the political organization of the polis. The closely-knit community which displayed an almost organic unity and where authority and law grew spontaneously from the general will of the body politic, seems to have been his ideal.

In every body politic there is a maximum strength which it cannot exceed and which it only loses by increasing in size. A small state is thus proportionally stronger than a great one.<sup>51)</sup> Discussing what people is a fit subject for legislation, he mentions, among other things, that it should be one in which every member is known by every other.<sup>52)</sup> The same insistence on a small state recurs later in the same treatise when he also promises that he will show how the external strength of a great people may be combined with the convenient polity and good order of a small State.<sup>53)</sup> He had intended to do this in a sequel to the Contrat social when he came to the subject of confederations, but this work was unfortunately never completed.

It may be said that Rousseau envisaged a free association of small autonomous states. In this set-up the central body formed by the states would only exercise such powers as the states decided to delegate to it. Each member of such an association will be free to withdraw from it if it should so desire. It is thus a pluralistic set-up.

There are, however, some indications of what Rousseau had in mind when he talked about confederations.

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51) Contrat social (In Vaughan, vol.2, p.56.)

52) Ibid., p.60.

53) Ibid., p.98.

One such indication we find in Emile in which Rousseau writes as follows: "Nous examinerons enfin l'espèce de remèdes qu'on a cherchés à ses inconvénients par les ligues et confédérations, qui, laissant chaque État son maître au dedans, l'arment au dehors contre tout agresseur injuste. Nous recherchons comment on peut établir une bonne association fédérative; ce qui peut la rendre durable; et jusqu'à quel point on peut étendre le droit de la confédération, sans nuire à celui de la souveraineté".<sup>54)</sup> What Rousseau had in mind, seems to be the following: In order to safeguard the small state against aggression of the large, some form of confederation is necessary. This can come about in the same way as the individual state. Just as individuals united to form a state without losing their individual freedom, so states can federate without giving up their internal sovereignty. In other words, he envisages an international contract more or less similar to his social contract.

In the writings of Abbé de St. Pierre which Rousseau edited and in which we find some of his own ideas, the idea of confederation recurs. This time the idea is to establish a power of restraint amongst the States without setting up <sup>any</sup> particular sovereign or dominating power. This project is rather similar to the Dorian league described by Plato in his Laws. An essential condition imposed by such a pact is that the government of each participating state shall always be according to the public law, for one cannot guarantee the princes against revolt from their subjects without at the same time guaranteeing the subjects against the tyranny of their princes. Here we thus have sovereignty of law enforced by an international compact.

As.....94

54) Ibid., p.158.

As we have seen, Rousseau regarded private property as the foundation of a state of society which existed prior to the establishment of the state. In the Economie politique he qualified this concept of property by stating that before the foundation of the civil state the individual could claim no more than possession founded on the right of the first occupant. With his entry into the civil state, i.e. by taking part in the pact of association, the individual surrenders such possession together with all his other powers to the community. The community, respecting the right of the existing occupant, converts that imperfect and precarious right into a complete right, into legitimate ownership. Finally in his Projet de Constitution pour la Corse (1765) he summarizes his position by writing that it is not his intention "de détruire absolument la propriété particulière, parceque cela est impossible, mais de la renfermer dans les plus étroites bornes..."<sup>55)</sup>

It is thus clear that although Rousseau regarded private property as "le plus sacré de tous les droits des citoyens"<sup>56)</sup> he was not prepared to allow this right to interfere with the common good of the community. It is accordingly a right that has to be controlled and defined by law so that its abuse does not lead to disharmony and unrest in the community. Moreover, the sovereign has a perfect right to appropriate to itself some portion of the property of individuals whenever they fail on their own account to make a voluntary contribution to the state.

The relation of the individual to the state and the community in the political theory of Rousseau, remains a controversial issue. There are mainly two schools of thought on this issue: one which contends that the indi-

vidual.....95

55) Vaughan, vol.2, p.337.

56) Ibid., vol.1, p.259.



vidual loses all his freedom and independence as soon as he becomes a member of Rousseau's state or community; another holds that far from losing his freedom, the individual is enabled by his membership of the community to become really free and to develop his better self to the highest possible level.

To be able to discuss this question properly, one must first of all understand what Rousseau means by liberty. In the Contrat social, he defines liberty as<sup>57)</sup> "l'obéissance à la loi qu'on s'est prescrite". This is moral liberty which alone makes a man truly master of himself. To yield to the mere impulse of appetite is slavery. This concept of liberty contains an element of restraint; to be really free, man has to restrain his own baser passions, he has to act as a rational and moral being and as such he has to consider the interests and feelings of his fellow-citizens. In the eighth of<sup>58)</sup> his Lettres de la Montagne, Rousseau states that liberty consists less in doing one's will than in not being subject to that of another. Liberty that is without justice is a veritable contradiction. There is no liberty where there are no laws or where any one is above the laws. From this statement we may legitimately conclude that according to Rousseau liberty can only survive where sovereignty of law is acknowledged. Liberty thus consists in the opportunity to participate in the creation of the law to which one is subject and to exercise one's rights as citizen in such a way that the laws are always respected.

"To him", Cassirer writes, "freedom did not mean arbitrariness but the overcoming and elimination of all arbitrariness, the submission to a strict and inviolable law which the individual erects over himself. Not re-

nunciation.....96

57) Ibid., vol.2, p.37.

58) Vaughan, vol.2, pp.234-5.

nunciation of and release from this law but free consent to it determines the genuine and true character of freedom". It was also of this kind of freedom that Goethe wrote the following lines:

"Nur der verdient sich Freiheit wie das Leben,  
Der täglich sie erobern muss".

It is obvious that this interpretation of liberty enables us to reconcile it with obedience to a popular sovereign such as Rousseau envisaged.

To see the relation of the individual to the community in the right perspective, we should take note of Rousseau's conception of Providence as expressed in the Lettre à Voltaire (1756). All beings have their appointed place and good within the Whole whose beneficence devolves upon each and every one in so far as it holds to the order or law of the general good. In the physical order everything must be conceived in terms of its relationship to the Whole, but man's existence is not limited to the physical; he has also moral needs. The most complete and finest conception of Providence would thus be this: that every material being is disposed in the best possible way with regard to the whole and every moral being in the best possible way with regard to himself. This implies an absolute worth in the individual, notwithstanding the superior value of the Whole in the other aspect. If we keep this view in mind, we cannot describe Rousseau's theory of the state as merely organic where the part has no independent existence apart from the Whole. The individual remains a concrete unit with its own unique personality, but in a state of civil society, the individual cannot fulfil his human destiny in isolation, outside society.

This view is fully subscribed by Rousseau in L'État de guerre: "La difference de l'art humain à

l'ouvrage de la nature se fait sentir dans ses effets. Les citoyens ont beau s'appeler membres de l'État, ils ne sauraient s'unir à lui comme de vrais membres le sont au corps; il est impossible de faire que chacun d'eux n'ait pas une existence individuelle et séparée, par laquelle il peut seul suffire à sa propre conservation"...<sup>59)</sup>

Those who hold a pessimistic view of individual liberty in Rousseau's political theory, rely heavily on "l'alienation totale de chaque associé avec tous ses droits à toute la communauté" at the conclusion of the social contract. They forget that Rousseau requires absolute unanimous consent on the part of the participants to the social compact. Without unanimous consent it simply cannot come into existence. Then it must also be remembered that in order that man may be rescued from the chaotic state of society into which the state of nature has gradually degenerated over the ages, he must be willing freely to surrender himself with all his rights and possessions to the civil community created by the social compact so that he can be regenerated and as much as possible of the equality and other advantages of the state of nature can be restored to him. Seen in this light, I am inclined to agree with Derathé who contends that "l'alienation totale n'est qu'un artifice pour garantir l'homme vivant en société de "toute dépendance personnelle" et lui permettre d'être aussi libre que dans l'état de nature..."<sup>60)</sup> Far from destroying the rights of individuals, the social contract re-establishes them on a reasonable and legitimate basis.

Two other features of Rousseau's political theory may be regarded as safeguards of individual liberty. The first is the fact that he does not advocate an unlimited sovereignty as we have indicated above. Equality

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59) Vaughan, vol.1, p.298.

60) Op.cit., p.171.

before the law is consistently maintained. The second feature is his continuous insistence on a small state so that the individual will be in a position to take a personal part in the deliberations of the sovereign assembly. In the highest legislative body of the community the individual citizen is entitled to put his views and to plead his case. This privilege, together with the oft-repeated sovereignty of law, are to my mind the best guarantees for individual liberty that are humanly possible.

From the above it is clear that, according to Rousseau, a community or a people can only come about legitimately by the free consent of each constituent member. After a community has been formed in this way, it is a persona moralis with a will of its own.

Rousseau's social contract is thus a mutual agreement to form a corporate body, freely entered into by individuals, but once a community is formed, every individual has to recognize the authority of its general will.

This general will is not the will of a physical person (as advocated by Hobbes), or of a part, or even the majority of the members of the community. It is nothing less than an ethical law which the members of the community erect over themselves voluntarily, because they realize that only by obeying such an ethical imperative, can individual freedom be maintained in a community.

Those who allege that Rousseau sacrifices individual freedom on the altar of the will of the majority, forget that he clings uncompromisingly to the notion of sovereignty of law and an ethical law at that.

The purpose of the state is indeed to create the circumstances necessary for a free and virtuous life.

On the other hand the citizen will realize that such a life is only possible if he is prepared to put the common good of the community as a whole above his own petty predispositions and selfish interests. Only in working towards a common good, can the individual fulfil his own true destiny.

In this connection it should never be forgotten that Rousseau realized that such a free interplay between the individual and general point of view can only be achieved in a small community, not in a large nation-state. His state is therefore equivalent to an autonomous corporation in a pluralistic confederation. In this way his political theory may be regarded as pluralistic.

When one considers the main principles of Rousseau's political theory carefully in their historical setting, one is justified to state that they constitute a distinct return to the position of the Vindiciae contra tyrannos. Like the latter, he acknowledges the people as a corporate body who is the real seat of sovereignty. This corporate body of Rousseau comes about as a result of a contract of association between the individuals making up the body politic. In the Vindiciae we are simply faced with the people as a corporate body who contracts with a prince who is nothing more than the executive organ of the body politic. Similarly Rousseau's government is simply the servant of the sovereign people. To guard against the abuse of power by the government the assembly of the people meets regularly.

Both Rousseau and the Vindiciae employ a concept of sovereignty absolutely different from that of Hobbes. According to them sovereign bodies or monarchs are not entitled to do anything they think fit. Both of them acknowledges the absolute authority of a just and

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reasonable universal law which cannot be violated by any state. In this way they are able to justify intervention in the affairs of sovereign states who violate this universal law.

In opposition to Hobbes, they both defend the right of private property and they both believe that a religious basis is indispensable to a sound community life. This belief, however, goes hand in hand with a spirit of toleration.

Rousseau with his insistence on small states, and the Vindiciae with its eloquent defence of the rights and liberties of all peoples and corporations in a commonwealth, both favour political pluralism according to which not the ruler, but the people, creates the laws. Even the content of these laws should, however, conform to the immutable principles of justice and reasonableness in which both theorists firmly believe.

In a later chapter we shall deal with the similarities between the political doctrines of Rousseau and the Vindiciae in more detail.

CHAPTER 7.

A COMPARISON OF THE POLITICAL DOCTRINES OF HOBBS  
AND ROUSSEAU.

Before we compare the political doctrines of Hobbes and Rousseau point by point, it will be necessary to say a few words about the position that these two philosophers occupy in the general history of philosophy. What is known as modern philosophy is usually said to start in the seventeenth century and especially with the writings of René Descartes. Between the medieval period and the seventeenth century, from 1400 to 1600, we find the philosophy of the Renaissance which mainly consisted in a humanistic renewal of Greek philosophy which gradually led to a natural science world view.

Hobbes grew up at a time when this new scientific view was gaining ground rapidly and he was, as we have pointed out previously, intensely influenced by it. The main characteristic of this philosophy was a rejection of the traditions of the medieval period including the infallible authority of the church. The philosophers displayed an attitude of severe scepticism toward all current traditions and ideas and they had a great confidence in the power of human reason and held that it could solve all problems. These characteristics are clearly reflected in the thought of Hobbes. His works breathe a spirit of conscious confidence in the power of human reason and in the efficiency of mathematical method. On the other hand he dismisses with disdain any belief in incorporeal spirits, in hell, the divine right of kings and that the essence and existence of God can be proved rationally. Both his method and thought constitute a distinct break with medieval traditions and beliefs.

The spirit of modern philosophy grew and spread and reached a culmination in the eighteenth century in the so-called Aufklärung. The confidence in the power of the human mind to understand and render human life and all its phenomena and institutions intelligible was as high as never before. In the vanguard of this intellectualistic movement we find the Encyclopaedists with whom Rousseau was closely associated at first. These people glorified the achievements of the human race and boasted of its arts, sciences, civilization and progress. At the height of the age of enlightenment, however, Rousseau struck a singularly discordant note by characterizing the arts and sciences as sources of moral decay and injustice. He rudely shocked those who believed in the supremacy of the human mind, by stressing the importance of the sentiments of the heart. Man's worth depends not on his intelligence, but on his moral nature which consists essentially of feeling. His attitude can be regarded as a reaction against the over-confident belief in the power of the human mind and as a defence of the importance of the irrational forces in the human personality. Rousseau was possibly the first to realize that his contemporaries had gone too far in their enthusiasm for the potentialities of human reason and that their view of human nature was one-sided and unbalanced. He tried to redress the balance by stressing the neglected characteristics of man, namely his feelings and sentiments.

So we find Hobbes at the beginning of modern philosophy with plenty of enthusiasm for the new natural science view of man and the world, while Rousseau, roughly a hundred years later, has no confidence in this new-found wisdom and easily points out its one-sidedness and fallacies.

When we come to the narrower field of political  
philosophy.....103



philosophy we find a development which ran more or less parallel to that of general philosophy. Here we also find a break with medieval tradition as a result of the revival of humanism, and a return to Greek ideas in connection with state and society. These features were first manifested in the writings of Machiavelli. He regarded the temporal sovereignty of the Papacy as an obstacle to the development of an Italian national state and advocated the complete separation of the spiritual from the secular power. He no longer conceived the state teleologically as was the custom, but in a purely naturalistic fashion as a product of the needs and interests of individuals.

After the Reformation the Protestants regarded the state as an instrument of expediency in the service of the divine order, while the Catholics regarded it as a human arrangement which needed the sanction of the church in order to be valid. In time these oppositions yielded to the view that the relation of man to God fell outside the sphere of the state. In other words, an attitude of religious tolerance on the part of the state prevailed. This attitude was clearly reflected in Thomas More's Utopia. Hugo Grotius finally completely separated divine and human rights, basing the first on revelation and the second on reason.

Associated with this interest in the relation between church and state was the social interest. Already in the writings of Campanella and More we find the assertion that the state should be an artificial creation of human insight for the removal of social injuries. However, the main tendency of the time was to seek a right founded in nature which will be valid for all times and places and to be recognized by reason alone: a rational,

universal right. Instead of just nature, Grotius took human-nature as his starting-point and he found the fundamental principle of natural right in the social need of man, and the method for its development in logical deduction. Private rights became an authoritative presupposition of political right. In a like manner Hobbes regarded the body politic as a machine capable of being deduced from the conception of its end by pure intellectual activity and the philosophical doctrine of rights as a perfect demonstrable science. Pufendorf, combining the doctrines of Grotius and Hobbes and introducing mathematical method, developed his whole system synthetically from the assumption that the individual's instinct toward self-preservation could be rationally and successfully fulfilled by only satisfying his social need. The ultimate ground of public life and social coherence was thus placed in the interests of individuals and the principle of the origin of the state was conceived as a contract. Pufendorf still continues the tradition of Althusius and Grotius. His contract is not one of surrender, but one of consent based on pre-society property-relations. Furthermore, law is still for him the dictate of reason and he regards it as incumbent on the state to maintain<sup>1)</sup> the law of nature.

In connection with the contract theory, we can discern a difference of opinion. Theorists like Bodin, Le Bret and Hobbes contended that the subjection of individuals to a sovereign did not constitute a reciprocal agreement. Should the sovereign thus violate his part of the contract his subjects had no means of redress. In sharp opposition to this view the Vindiciae contra tyrannos and Althusius held that the people who, as a corporate.....105

1) Cf. Prof. A.H.Murray: The political theory of J.A.de Mist. H.A.U.M., 1962. p.46.

corporate body, is the true bearer of sovereignty, never alienated its sovereignty unconditionally to any ruler. They are thus convinced that the people had a perfect right to eject a ruler who did not keep his part of the contract. Although this current of thought suffered an eclipse in the seventeenth and major part of the eighteenth century, its most important principles were resuscitated in the political doctrine of Rousseau.

The new sovereign state which emerged in the seventeenth century was a power phenomenon and the ethical nature of man was ignored. The mechanistic view of man, as exemplified in the philosophy of Hobbes, envisaged politics as a play of irreconcilable powers. Conflict among individual interests and among the interests of groups necessitated a strong central authority to maintain the peace. The purpose of the state was thus to maintain peace and order by restraining its recalcitrant constituents by means of superior power. In the exercise of this power no ethical principles and no feeling for the spiritual needs and nature of man carried any weight.

Even in the age of Rousseau, most of the thinkers of the Enlightenment had a gloomy conception of the natural meanness of man and they thought that man's education to ethical action had to appeal to his lower impulses. The Encyclopaedists were convinced that man as a genus was never to be determined by anything else than by his own personal interests. This view of man as being by nature essentially egoistic, led to the belief that he could only be compelled by the strong arm of the state to keep the social compact. It was against this attitude that Rousseau revolted with his doctrine of the natural goodness and innocence of man. The egoistic man described

by his contemporaries, was regarded by Rousseau as a man corrupted by unjust social conditions. It was not the true natural man, but a suppressed caricature.

In this respect Cassirer rightly points out:  
"Against mere feeling Rousseau affirmed the primacy of reason; against the omnipotence of nature, he appealed to the idea of freedom. He did not wish to abandon the highest form of the human community to the naked domination of natural forces and instincts; rather, this form was to grow out of the force, and to exist in accordance with the demands, of the ethical will...Rousseau - in opposition to the predominant opinion of the century - eliminated feeling from the foundation of ethics".<sup>2)</sup>

<sup>3)</sup> In his Zaharoff lecture for 1953 Professor Georges Davy draws quite a few parallels between the doctrines of Hobbes and Rousseau. He shows that Rousseau learnt much from Hobbes as far as the notions of contract and sovereignty are concerned. He also points out that both of them admitted the democratic creation of the state because the unanimous consent of the subjects was required, both regarded the people as the true original sovereign and both had a more or less similar conception of the law of nature. They used fairly similar analyses for different ends: Hobbes, "le philosophe de la sécurité à tout prix" and Rousseau, "le philosophe de la liberté, qui ne saurait s'aliéner à aucun prix".<sup>4)</sup> Davy does, however, admit the essential difference between the two theorists when he says that Rousseau never consented to the alienation of that sovereignty of which Hobbes had taught him to recognize the popular roots.

The whole structure of Hobbes' political theory  
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2) Op.cit., p.99.

3) Thomas Hobbes et J.J. Rousseau. Oxford, 1953.

4) Op.cit., p.6.

rests on his conception of the nature of man and the state of nature. He conceives the state of nature as a condition of war of all against all. This state of war is a result of the relentless competition between independent individuals each of whom is continuously striving after his own interests without any consideration for his fellow-men. Men in the state of nature are utterly devoid of any social or moral sense and are essentially egoistic. As men are more or less equal in the state of nature, nobody can enjoy any security and safety and thus fear of violent death possesses one and all of them. Fear of death is one of the two basic human passions, the other being pride, a desire for ever greater power. It is only when fear of death becomes such an overwhelming passion that it can no longer be suppressed that man is forced to use his reason and to come to an agreement with his fellow-men whereby a civil state can be instituted in which a sovereign will can be authorized by all of them to maintain the peace and security in the society.

Rousseau rejects Hobbes' view of the state of nature and of the nature of man. He points out that the strife and competition which are the main features of Hobbes' state of nature, can only develop in a state of society. Rousseau places his own state of nature much further back in the past of mankind. At that stage man was a lonely, innocent individual. There was thus no opportunity for fighting and conflict. As the world became more densely populated in the course of thousands of centuries, there developed a kind of rudimentary state of society among men. It is only to resolve complications arising in the state of society that men eventually conclude a social contract.

Man is by nature good and innocent. He is mainly motivated by two sentiments, namely self-preservation

or self-interest and compassion or pity. Although a feeling of sociability is not natural to man, he has nonetheless an innate feeling of aversion to see anyone of his own species suffer and it is thus impossible that a state of war can come about in the state of nature as conceived by Rousseau. Apart from self-preservation and compassion, all the other passions are of a social origin and do not exist in the state of nature. Although men are not naturally equal, this is hardly noticeable in the state of nature owing to the isolation of the individual. However, as soon as a state of society comes about, the stronger and more intelligent individuals rapidly enslave the less fortunate ones and that is how the unjust state of affairs as reflected in the absolute sovereign state in which Rousseau lived, originated.

Another characteristic of Rousseau's view of man, is man's capacity to perfect himself. In the state of nature man had no home, no language, few passions and almost no intelligence. Yet he was a free agent and had the potentiality to develop himself. He was thus capable to rise to great heights over the years.

There is thus no resemblance between Rousseau's state of nature and that of Hobbes. Rousseau's state of nature lies so far back in the past that it cannot possibly coincide with that of Hobbes. As far as the nature of man is concerned, Rousseau's view is much more balanced than that of Hobbes. We find the selfish, egoistic Hobbesian man replaced by a human being who experiences feelings of both self-interest and compassion. Rousseau's view of man is evolutionary: man has the ability to perfect himself and does so. Hobbes' view of man is stationary: man is and always remains selfish and brutish and can only be restrained from violence by a superior power. It is also clear that Rousseau rejects the

conviction of Hobbes that the conduct of man in society can be explained and analysed in a purely mechanical way.

As far as the notion of contract is concerned, it is quite true that there are superficial similarities between the positions of Hobbes and Rousseau. Von Gierke<sup>5)</sup> distinguishes two types of contract: a contract of rulership and social contract. The first type of contract assumes that the people is the source of right and sovereignty which it transfers to a ruler. In this type of contract we thus have two parties: the people conceived as a corporate body and the ruler who may be a physical person. This view cannot escape a dualism in the overall State personality and it is this dualism that the keen eyes of Hobbes detected and eliminated by his version of contract. He replaced the contract between people and ruler by a covenant of every man with every man. This covenant is, however, only concluded between individuals in order to institute a sovereign to which all individuals subject themselves unconditionally. To my mind Hobbes never conceived the people as a corporate body<sup>6)</sup> prior to the institution of the sovereign. There is thus no contract between people and ruler, but only a contract between individuals who agreed mutually to transfer their rights to a ruler and only in the physical personality of the ruler do we find the unity of the body politic. As soon as the ruler is removed, the body politic immediately disintegrates into a warring multitude. Hobbes' notion of contract is thus merely a pact of association combined with an act of unconditional surrender to a ruler. Hobbes prefers to conceive this ruler as a physical person in whom the natural rights of each individual subject.....110

5) The development of political theory. Tr. B. Freyd. London, Allen & Unwin, 1939.

6) Leviathan, p.80.

subject find themselves represented, and who exercises all the powers of a state, legislative, executive and judicial.

Rousseau eliminates the contract of rulership from his contract theory. According to him there neither is, nor can be a contract of rulership. The institution of a government is not a contract but merely a commission. Rousseau's social contract is a compact of association between free, independent individuals. So far Rousseau's contract is similar to that of Hobbes, but whereas Hobbes' subjects alienate their rights to a third party, those of Rousseau alienate theirs to the whole community formed by the self-same individuals. By means of Rousseau's contract the people thus become a corporate body, a persona moralis with a will of its own. The unity of the body politic exists in the fact that all individuals are now members of this persona moralis. Rousseau rejects emphatically the idea that the sovereignty of the people can be represented by anybody except itself. It is wrong to state that Rousseau contemplates the complete absorption of the individual in the community.<sup>7)</sup> Such an assumption presupposes a passivity on the part of the individual which cannot be reconciled with his active participation in the actions of the general assembly of the people where he is required to help in forming the general will. What Rousseau might well have contemplated, was that the individual, once he has left the state of nature, can only exercise his rights and liberties in a legally organized community. Freedom outside the community is a barren abstraction.

Many commentators failed to understand the difference between the "will of all" and the "general will" in Rousseau's doctrine. The "will of all" is clearly only  
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7) Cf. Otto von Gierke: Op.cit., p.110.



the will of an aggregate of individuals of whom the interests happen to coincide. This is what happens when individuals, according to Hobbes' contract theory, agree to transfer their rights to an absolute sovereign.

The "general will", on the other hand, is the will of the corporate body, or persona moralis resulting from Rousseau's social contract. The wills of the individual members of the body politic are here fused into one which is focused on the common good. Furthermore the "general will" embodies the universal law of nature, which cannot be said of the "will of all".

Whereas in Hobbes' notion of contract everything is taken over by the ruler and exercised on behalf of the subject, the subjects' rights are re-established and legalized by means of Rousseau's contract and returned to them so that they can exercise them on their own behalf in conjunction with their fellow-citizens. We must remember that Rousseau's view of the nature of men differs from that of Hobbes and consequently his citizen does not need the compulsion of a third party to honour the social contract. .

It remains to be pointed out that the relation between the general will and the executive government as envisaged by Rousseau, allows for a great measure of adaptability in legislation and policy. Every time the people assembles, the government may be suspended and thus there is scope for permanent bloodless revolution. This can be regarded as one of the advantages of Rousseau's contract theory. In Hobbes' case the people can only affect a change if they so desire by violently disposing the ruler, because he is under no obligation to give effect to the wishes of the people.

As in the case of the contract theory, there are quite a few superficial similarities between the theories  
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of sovereignty of Hobbes and Rousseau. Commentators who took an unfavourable view of Rousseau's political doctrine, never failed to stress these similarities which mainly exist in the attributes assigned by both theorists to their conceptions of sovereignty. Both of them describe sovereignty as being absolute, indivisible and inalienable. In addition Hobbes says that sovereignty is unlimited. This is not the opinion of Rousseau, in spite of what some commentators wrote about him, he definitely admits that there are some limits on sovereign power. When he says that sovereignty is absolute, he only means that the authority of the sovereign over the members of the body politic cannot be challenged by any other authority. Only such part of the rights and powers of the individual which is useful to the community should be given by him to the community. There is thus not an absolute transfer as in the case of Hobbes. Furthermore the capacity for action of the sovereign, the general will of the community, is severely limited by the fact that such actions should be strictly general. The acts of the general will may thus not be arbitrary, but must apply to all members of the community equally. As all the members of the community participate in the formation of the general will and its acts, it is highly unlikely that they will be unjust to themselves. These arguments do not hold for Hobbes' sovereign who may make any law he thinks fit and may even discriminate among his subjects, as he stands outside the body politic.

It is in the location of sovereignty that there is a fundamental difference between Hobbes and Rousseau. While in the case of Hobbes, the sovereign individuals transfer all their rights to one person who exercises the supreme power on behalf of each of his subjects,

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Rousseau locates the sovereign power in the general will of the community. In other words, Hobbes locates sovereignty in a personal ruler, while Rousseau locates it in the people conceived as a corporation with its own persona moralis.

All powers, legislative, executive and judicial, temporal as well as spiritual, are concentrated in the person of Hobbes' sovereign. Rousseau, although he maintains that the sovereign will is indivisible, admits that the sovereign power may be transmitted. Accordingly we find a certain measure of decentralization: the general will should restrict its activities to general legislation; it should delegate the executive power to a government which is subordinate to it. Further it seems that Rousseau contemplates a third body which he calls the tribunate whose duty will be that of the judiciary, somewhat similar to the rôle of the Ephors in ancient Sparta. Both the executive and judicial powers are subject to, and operative on a commission from, the real sovereign.

Hobbes openly declares that the sovereign is subject to the law of God and nature. Rousseau subscribes to the same view by implication. Hobbes does not, however, provide anybody with authority to restrain the sovereign from violating laws. So it remains purely a matter for the sovereign's own conscience. As Rousseau's sovereign is the community as a whole, I think that there is less chance that the law of God and nature will be violated in the deliberations of a corporate body where individuals are at liberty to attempt to restrain one another from unjust action. There is, of course no water-tight safeguard against such possible violation, but then at least a majority of the community must agree to do so, which although possible, is unlikely. The only real safeguard against injustice in a democracy is strict

adherence to the eternal precepts of natural law by the majority. This, to our mind, is also the position of Rousseau.

One can thus say that once Hobbes' sovereign is instituted the people, or rather the individual subjects, lose all control over him and simply have to condone everything he does because he is acting on their behalf; his will is merely an extension of their wills. Hobbes did not see that the will of one man, his sovereign, and the will of the people may not always coincide. On the contrary, he denies that the people may have a will different or separate from the sovereign. In Rousseau's conception of sovereignty the individual, by virtue of Rousseau's rejection of any idea of representation, always retains a foothold in the sovereign body where he is entitled to put his views. This privilege of the individual to state his views and to try to persuade his fellow-citizens to support his point of view, constitutes the maximum safeguard to personal freedom that can possibly be found in political theory apart from natural law.

As far as the law of nature is concerned, I agree<sup>8)</sup> with Davy that there is indeed agreement between the doctrines of Hobbes and Rousseau. Both regard the law of nature as eternal, immutable, universal, reasonable and divine. In the state of nature, however, conditions do not exist to enable men to observe the law of nature without endangering their safety. It is for this reason that the law of nature needs the backing of the civil laws so that its observance by men may be reciprocal. Both Hobbes and Rousseau seem to intend that the civil laws of the sovereign should incorporate, or at least not violate, the precepts of the law of nature. For both of them the law of nature epitomizes all justice,

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8) Op.cit., p.27

safeguard to individual inviolability does not exist in the doctrine of Hobbes.

Characteristic of their diametrically opposed points of view are the conceptions of liberty of Hobbes and Rousseau. Hobbes, true to his mechanistic and materialistic disposition, defines liberty as "the absence of all the impediments to action that are not contained in the nature and intrinsic quality of the agent".<sup>9)</sup> This conception is purely mechanical and has no ethical content whatever. Rousseau, on the other hand, defines liberty as the submission to a strict and inviolable law which the individual erects over himself and which he recognises as valid and necessary.<sup>10)</sup> Liberty has thus an ethical content and implies self-discipline and self-restraint.

Taking all these points into consideration, it does not surprise one that Rousseau attributes a moral content to the law and that he expresses the opinion that it is to law alone that men owe justice and liberty. Hobbes, on the other hand, holds up the law as the criterium of right and wrong. What the law commands, the subject should accept as right and what the law forbids, the subject should accept as wrong. The command of the sovereign is thus the final word on right and wrong whatever the content of that command may be. Rousseau, however, states in his Lettre à Mirabeau as we have indicated in the previous chapter, that his great ideal was to find a form of government which puts the Law above man. By "Law" he must have meant the law of nature with all that it stands for and if seen in this light, the passage can only mean that he favoured the sovereignty of law. The acknowledgment of sovereignty of law is of course  
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9) Quoted by Peters: Op.cit., pp.178-179.

10) Cf. Cassirer: Op.cit., p.55.

another, and a powerful, guarantee for individual rights and liberties. In Hobbes' doctrine the civil, as well as the natural law are at the mercy of the monarch.

According to Hobbes all the rights of the citizens are completely and irrevocably absorbed into the sovereignty of the ruler; it is thus to be expected that he does not favour the existence of spontaneous corporations in the commonwealth. Such corporations can only be tolerated with the approval of the sovereign. It is abundantly clear from the whole tenor of his argument that he favours a direct relationship between sovereign and subject. Superficially the doctrine of Rousseau on this issue has much in common with that of Hobbes and commentators who regard Rousseau as an incorrigible state absolutist, never fail to point out that he has no place for any partial associations in his state. This, they complain, is clearly a violation of the principle of freedom of association. These people forget that it is a small city-state that Rousseau is describing and not a large commonwealth such as Hobbes had in mind. Without expressing myself about the practicability of Rousseau's project, I cannot find anything wrong with its principle. It allows all citizens free access to, and participation in, the proceedings of the legislative assembly so that it can be said that their freedom of assembly are catered for quite well. The formation of associations outside the sovereign assembly may only lead to the emergence of cliques who may try to usurp the powers of the sovereign. It is important that in Rousseau's sovereign assembly every man should speak for himself and that no groups or parties should be formed to try and capture the sovereign power.

However, the ideal state described by Rousseau in

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It is thus clear that Rousseau is convinced that in a successful political community the moral base of a belief in God is indispensable. He would thus not tolerate manifest atheism or blasphemy in his state. For the rest, however, he advocates tolerance and allows any church that tolerates others, so long as its dogmas do not conflict with the duties of citizenship.

Whereas Hobbes' sovereign has full control of all religious matters in the commonwealth, Rousseau's sovereign requires its subjects to subscribe to a limited basic faith and for the rest they may have their own opinions provided that they practise no religious intolerance towards their fellow-citizens. It should further be stressed that whereas Hobbes requires his citizens meekly to obey their sovereign in religious matters, Rousseau requires his citizens to believe in an omnipotent God who rewards the just and punishes the wicked. Hobbes thus relies on the fallible will of a human sovereign, whereas Rousseau relies on ultimate and objective ethical values. Once again we find arbitrariness opposed to the principles of eternal and universal justice.

The general relation of the individual to the sovereign differs widely in the theories of Hobbes and Rousseau. Taking private property as an example, we find that the land and all its resources belong to Hobbes' sovereign and that the subject may only call such land his own as the sovereign determines. Rousseau's subject also surrenders his property to the sovereign, who, however, restores it to him with proper legal backing. Private property is thus only rendered legal by the social contract and neither diminished nor enlarged.

Rousseau's sovereign made up of the particular members of the community concerned, cannot conceivably have any interest contrary to the general interest of its members.

It is also unreasonable to accept that the sovereign will do anything to hurt or injure its members as such action will apply to all equally. It is patently absurd that anybody will do anything to hurt himself wilfully.

Whereas Rousseau realizes that man can only find his happiness and fulfilment in the bosom of a community in the activities of which he can freely partake, the subjects of Hobbes' commonwealth never seem to develop any social coherence and return to a state of war as soon as the sovereign with his irresistible power of coercion is removed.

The subjects of Hobbes' commonwealth have no participation in legislation. The sovereign does everything on their behalf. However, should the sovereign threaten their lives, they may resist individually. The rest of the liberty of the individuals depends on the silence of the law, in other words, they may do such things as the laws do not prohibit.

In the light of Rousseau's conception of the rôle of the individual in the civil community, one can appreciate his opinion that the subject has no need to resist his sovereign. If he should have any complaint or objection he is perfectly at liberty to air his views in the legislative assembly. If his views are so much at variance with the general will that he feels bound to refuse to submit, he simply has to withdraw from the community.

The main difference then between Hobbes and Rousseau, is that while the individual subject is more or less helpless against the will and whims of the mighty Leviathan, he does have an opportunity to vindicate himself before Rousseau's sovereign although his success cannot be guaranteed.



As a true child of the philosophic atmosphere of his time with its mechanism, subjectivism and nominalism, Hobbes led the prodigious effort of modern philosophy to reduce both natural and human phenomena to extension and motion. If this assumption is accepted, the procedure of the mathematical natural sciences can be applied to all situations. This is exactly what Hobbes did: he used the specific notions and methods of the new physical sciences and generalized them to cover man whom he viewed as part of the mechanical system of nature. That the rights and liberties of man, his spiritual and ethical nature and his belief in universal and objective values have no place in such a system is obvious. It is also clear that a system of government based on such principles will ignore all those qualities which distinguish human beings from the physical things of nature.

This great confidence in the power of human reason had reached its zenith when Rousseau made his appearance. He vehemently rebelled against this mechanistic conception of man and asserted with all the eloquence at his disposal the emotional and ethical nature of man and his inalienable heritage of freedom. In general one may even say that Rousseau was an early precursor of the life-philosophers of the twentieth century.

Rousseau's political philosophy thus deals with a concept of man that is totally different to that of Hobbes. Instead of a self-propelled atomistic individual who consistently collides with other similar individuals and who can only be kept in peace and order by a superior coercive power, we find in Rousseau's doctrine a man who realizes that, in order to achieve happiness and to reach his destination, he simply must be prepared

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to life in a community with his fellow-men in such a way that the general good of the community as a whole is advanced. Man, according to Rousseau, is able to submit freely to a universal moral law which he recognizes as valid and necessary for its sake as well as for his own. The state should thus not be conceived as an instrument of coercion but as a means to secure sovereignty of law and so to realize the dignity of man.

CHAPTER 8.

A COMPARISON OF ROUSSEAU WITH THE  
VINDICIAE CONTRA TYRANNOS.

In our preceding chapter we have detailed the fundamental differences between the political doctrines of Hobbes and Rousseau.<sup>1)</sup> Writers like Sir Henry Maine,<sup>2)</sup> Emile Faguet,<sup>3)</sup> and Taine who regard Rousseau as an advocate of collectivism, totalitarianism and despotism, are clearly mistaken. In our last chapter we shall deal with these interpretations of Rousseau in more detail. Suffice it to say that to our mind it is precisely the premises on which Hobbes based his doctrine that may lead to totalitarianism and despotism. If the nature of man is seen in the light of atomistic individualism, a case may be made out for totalitarian control by an absolute central state. If, on the other hand, one believes with Rousseau that human communities can be formed and maintained by the free consent of their constituents, the coercive power of an arbitrary authority standing outside and above the people is unwanted and unnecessary.

To us it seems that Rousseau's position is much nearer to that of the Huguenot writers of the sixteenth century than most people realize. To indicate the numerous points of Rousseau's doctrine which coincide with those held by the Huguenot theorists, we propose to compare his political theory with that propounded in the Vindiciae contra tyrannos of which we gave a summary in chapter 3.

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1) Popular government. New York, Holt, 1886, pp.157,160.

2) Dix-huitième siècle, 43d ed. p.345.

3) Les origines de la France contemporaine, vol.1. Paris, 1896. p.521.

All these references are quoted in Introduction to Cassirer: The question of Jean-Jacques Rousseau. New York, Columbia U.P., 1956. pp.4-8.

The Vindiciae was a vehement protest against the absolute sovereign state which appropriated to itself all the rights previously held by the people and the spontaneous corporations. Pufendorf has shown us that a people can come into being as a result of a reciprocal contract between individuals and that such a union is a persona moralis and thus a subject of rights. Such a persona moralis can then conclude a contract of government with a personal ruler on certain conditions. The theorists of the new sovereign state, however, and notably Hobbes, deny the corporate character of the people and only recognize the sovereign state, as personified in an absolute ruler, as the only subject of rights and authority. In other words, the sovereign state invades and eliminates the corporate personality of the people and interposes a personal monarch vis-à-vis atomistic individuals.

It must be acknowledged by every impartial commentator that Rousseau's political writings also constitute a strong protest against the absolute sovereign state of his time and all the corruption which flowed from it.

Looking first at the concept 'people' as it occurs in the Vindiciae, one at once notices that it is used in the sense of a corporation, not in the sense of an incoherent number of individuals or a multitude, but of a persona moralis who is entitled to be recognized as a subject of rights. Only the whole body of the people may punish a ruler who violates his contract.<sup>4)</sup> So also the magistratus inferiores are not entitled to act on behalf of individuals, but only on behalf of the whole body of the people.<sup>5)</sup> Of the king it is said that he is a person who derives his authority from the community as a whole and that he is thus subject to the community, although

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4) Vindiciae contra tyrannos. Ed. H. J. Laski. London, Bell,

5) Ibid., p. 97. 1924. p. 92.

he is superior to any of the particular members of the community.<sup>6)</sup> Individuals are constantly warned that it is not their duty to resist a king who commands his subjects to break the law of God, because the contract between God and the people as a whole does not require of individuals to restrain godless rulers, because this is the duty of the whole universal body of the people which individuals should not take upon themselves.<sup>7)</sup>

Similarly Rousseau, criticizing Grotius for saying that a people can give itself to a king, says that it will be more profitable to examine the act by which a people has become a people. Before a people can thus appoint a ruler or government, it must first be a corporate body.<sup>8)</sup> To the people as a whole, according to Rousseau,<sup>9)</sup> belongs the legislative power and not to individuals.

Both in the Vindiciae and in the political writings of Rousseau the people thus has the status of a corporate body, a persona moralis, and of a subject of rights, therefore it can be the seat of sovereignty.

The position and functions of the ruler as described in the Vindiciae is very similar to that attributed by Rousseau to the executive officials in his Contrat social. According to the Vindiciae kings derive their power and sovereignty from the people.<sup>10)</sup> Kings are being elected by the people and the whole body of the people is thus superior to the king.<sup>11)</sup> If the king can be regarded as the pilot of the ship of state, the people can be regarded as the owners. The king is appointed to maintain justice and to protect the civil state and the individuals against dangers and menaces.<sup>12)</sup> The king is the organ and the body

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6) Ibid., p.98.

7) Ibid., p.109.

8) Contrat social. (In Vaughan, vol.2, p.31.)

9) Ibid., p.64.

10) Vindiciae., p.14.

11) Vindiciae, p.124.

12) Ibid., p.140.

through which the law manifests its power, fulfils its functions and expresses its conceptions.<sup>13)</sup>

The position of the king in the Vindiciae is paralleled by that of the executive government in Rousseau's Contrat social. He simply refuses to admit that a sovereign people can ever part with its sovereignty as was envisaged by Pufendorf. His government is appointed by the people to fulfil the executive duties in the state under commission. If a valid contract can only be concluded between equals, this commission cannot be regarded as a contract because the government is clearly the servant of the people. It may be termed a contract between master and servant. This is of course also the case with the Vindiciae's king, but Rousseau's government may be said to have even a more modest status and it can perhaps be said that in this respect Rousseau goes back to the constitution of a medieval city which was governed by a council who got its instructions from a regular town meeting.

However, it is clear that both the Vindiciae and Rousseau regard the people as the source of sovereignty and law and that the people as a whole is above the king or government which holds its office on such conditions as the people may impose. It exercises its functions not for its own benefit, but for that of the people.

In contrast to this position of king and government, it may be recalled that Hobbes' monarch is the absolute seat of sovereignty and thus the wielder of unlimited power over all his subjects by virtue of the fact that every individual in the state transferred all his rights unconditionally to the sovereign. Because he did not entertain the concept of the people as a corporate body existing prior to the advent of the sovereign state, it was inconceivable for Hobbes to locate sovereignty in such a non-existing.....128

13) Ibid., p.145.

non-existing body. True to his materialistic view, he could only locate sovereignty in a physical person.

The Vindiciae defines law as reason and wisdom<sup>14)</sup> which remained unaffected by the passions of persons. Nothing is just only because it has been decreed by the king, but only that king is just who decrees as just that<sup>15)</sup> which is just in itself. This means that as far as laws are concerned, it is not the will of the king that is important, but the content of the law. The king receives the laws from the people and it is his duty to maintain<sup>16)</sup> them with the utmost care. It is indeed the law that has the power of life and death over the inhabitants of the commonwealth and not the king who may only administer and<sup>17)</sup> maintain the law. This is undoubtedly a plea for sovereignty of law, free from the whims of any ruler.

Although many commentators on Rousseau assert that<sup>18)</sup> he does not uphold natural law, it is nevertheless evident from an important passage in the Contrat social that he is fully aware of the precepts of natural law and that he definitely implies that these precepts should prevail in civil legislation. He admits that there is a universal justice emanating from reason alone; but this justice to be admitted among us, must be mutual. It is thus one of the functions of civil law to provide sanctions so<sup>19)</sup> that justice may become effective among men.

Both the Vindiciae and Rousseau do not regard law simply as the command of a king as Hobbes does. On the contrary, they both acknowledge the people as the creators of law and they both agree that the content of the law is even more important than its source or form because it should uphold justice among men.

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14) Vindiciae, p.145.

15) Ibid., p.147.

16) Vindiciae, p.148.

17) Ibid., p.155.

18) Cf. Gough: The social contract. Oxford, Clarendon press,

19) Vaughan. Op.cit., vol.2, p.48. 1936, p.256.

Rousseau also contends that the civil laws, the acts of the volonté générale, should always be general and should apply equally to all subjects in the republic. He readily admits that the same laws do not suit diverse provinces with various climates.<sup>20)</sup> As both the Vindiciae and Rousseau regard the people as the source of its law, it is just natural that they have to admit plurality of laws.

How should it be decided what the law is and how can the people be safeguarded against abuse of power by the ruler? In the Vindiciae it is the duty of the magistratus inferiores, elected by the people, to guard the interests of the people as against the prince. If, however, an unusual event requires such action, the whole people can be assembled.<sup>21)</sup> Furthermore, it is the duty of the prince to call a meeting of the Estates-General to advise him and to take decisions, should it become necessary to amend the laws.<sup>22)</sup> In the case of Rousseau only the whole body of the people may decide on any legislation. Apart from extraordinary meetings necessitated by unforeseen circumstances, Rousseau demands that there should be fixed periodical assemblies so that on the proper day the people is legitimately called together by law, without the need of any formal summoning.<sup>23)</sup> The purpose of these automatic periodical assemblies is to prevent the government or executive body from attempting to usurp the sovereign authority.

Hobbes' sovereign is free to consult counsellors appointed by himself, but he is not bound to accept their advice. The people does not come into the picture at all. In the case of the Vindiciae and Rousseau, however, the people.....130

20) Ibid., p.57.

21) Vindiciae, p.127.

22) Ibid., p.153.

23) Vaughan: Op.cit., vol.2, p.93.



people assembles from time to time to exercise its legislative function and to guard against any form of tyranny on the part of the government.

On the question of slavery the Vindiciae and Rousseau see eye to eye. The Vindiciae states clearly that the subjects are not the slaves of the king but that each of them should be regarded as his brother.<sup>24)</sup> Rousseau has just as little sympathy for the idea of slavery. Someone who becomes a slave, sells himself at least for his own subsistence. But for what reason can a people possibly sell itself? A king never provides subsistence to his subjects; on the contrary, he receives his subsistence only from them. The idea of the enslaving of a people<sup>25)</sup> is thus absurd and inconceivable.

Coming to the question of private property which formed such a vital notion in the political doctrine of Locke, we see that, according to the Vindiciae, the people never surrender their property to the prince, but in their contract with him it is stipulated that he is required to protect their property. The prince is not even the absolute possessor of the royal demesnes and may not alienate<sup>26)</sup> any part of it without the approval of the Estates-General. In the Contrat social each member of the community gives himself to it, at the moment of its foundation, just as he is, with all the resources at his disposal, including<sup>27)</sup> the goods he possesses. The peculiar fact about this alienation is that, in taking over the goods of the individual, the community, so far from despoiling them, only assures the individual legitimate possession, and changes usurpation into a true right and enjoyment into proprietorship.<sup>28)</sup> The position is summed up succinctly by Ernst

Cassirer.....131

24) Vindiciae, p.156.

25) Contrat social. (In Vaughan, vol.2, p.28.)

26) Vindiciae, p.170.

27) Vaughan, vol.2 (vol.2) p.33.

28) Ibid., p.38.

Cassirer: "The state is therefore entitled and qualified to interfere with property insofar as the inequality of property endangers the moral equality of the subjects under the law..."<sup>29)</sup>

In both theories private property is thus recognized as a legitimate right of the individual, while, according to Hobbes, the subject may only call such property his own as is allowed to him by the sovereign.

As far as the question of contract is concerned, we find apparent differences between the versions of the Vindiciae and Rousseau, but there is still a great measure of basic agreement. The Vindiciae mentions two contracts at the inauguration of kings: the first between God, the king and the people in which the people promises to be a people of God; the second between the king and the people that the people will faithfully obey the king and that the king will reign justly.<sup>30)</sup> The people asks the king whether he will reign justly and according to their laws. This he promises. Only then does the people reply that, on condition that he reigns justly, they will faithfully obey him. In the first contract the king promises to serve God faithfully, in the second to rule justly over the people.

We see thus that the people as a whole promises to obey the king only on condition that he rules justly and according to their laws. By requiring the king to submit to certain conditions, the people proves that it holds the sovereignty and not the king.

Whereas the conception of contract in the Vindiciae may be described as a contract of government, Rousseau's notion of contract may be regarded as purely social. Individuals conclude a mutual compact from which a corporate body.....132

29) The question of Jean-Jacques Rousseau. p.60.

30) Vindiciae, p.71.

body arises whose will is sovereign. Each member of the community thus acquires a double capacity: he is simultaneously a participant in the sovereignty of the people and a subject to the sovereign who is the people as a whole.<sup>31)</sup> Apart from the social contract there is also a trace here of a contract of submission, i.e. the submission of the individual to the whole people of whom he forms a part. Sovereignty rests with the people as a whole and it is the people who appoints a government to act as executive organ of the general will. It may thus be said that Rousseau does not visualize a contract of government as a reciprocal agreement between equals.

Both in the Vindiciae and Rousseau the prince or government is not the law-maker as is the case with Hobbes' sovereign monarch. The prince has to abide by the laws of the people and has simply to act as executive organ. The people does not transfer its sovereignty to the prince, but retains it. In the Vindiciae the inferior magistrates elected by the people had an obligation to God to safeguard the rights of the people against usurpation by the prince. According to Rousseau the people as a whole in its legislative capacity delegates certain powers and duties to the government but maintains strict control of the executive branch by means of frequent assemblies and reviews. This state of affairs forms a sharp contrast to Hobbes' doctrine in terms of which each subject transfers all his rights absolutely to a personal sovereign. This transfer is so final that the subject, or the subjects acting in concert, may not question the acts of the king. There is simply no human control over the king: he is both the legislative and executive organ.

Just as the Vindiciae, Rousseau acknowledges that all justice comes from God, but this justice has to be

incorporated.....133

31) Vaughan: Op.cit., vol.2, p.34.

incorporated in the laws and the laws are made by the general will of the people.<sup>32)</sup> Recognition is thus given by Rousseau to the universal law of God which should be manifested in the general will.

Both the Vindiciae and Rousseau require the unanimous consent of all individuals who submit to a ruler or join an association. According to the Vindiciae man is by nature free and hates slavery. He is born rather to command than to obey. He will thus not voluntarily allow anybody else to rule him unless he expects some great benefit from it.<sup>33)</sup> Rousseau describes man's love of freedom in almost identical words: every man is born free and is his own master and no one, under any pretext whatsoever,<sup>34)</sup> can make any man subject without his consent. By means of his theory of the social contract whereby each member of the community enjoys a perpetual right to participate in the deliberations of the sovereign body, Rousseau attempts to satisfy the inborn love of freedom of the individual.

It should be remembered that in Rousseau's time individualism, after the doctrines of Hobbes and Locke, was well advanced. Rousseau thus had to take the individual as the point of departure in his political theory. In the Vindiciae the existence of the individual is admitted, but he was no public force; the emphasis is on the people as a corporate body in which the individual has his appropriate place and status.

As already stated, the people elected the magistratus inferiores and vested in them a tribunal authority<sup>35)</sup> to guard against violations of his trust by the ruler. If the prince should infringe the powers granted by the people.....134

32) Contrat social. (In Vaughan, vol.2, p.48.)

33) Vindiciae, p.139.

34) Contrat social. (In Vaughan, vol2 (vol.2) p.105.)

35) Vindiciae, p.97.

people to him, it is the duty of these officials to restrain him. This is indeed the safeguard against tyranny which is missing from the political theory of Hobbes. While Rousseau leaves the sovereign legislative power solely in the hands of the community as a whole, and the people is thus in a position effectively to control the executive branch, he also talks about a tribunate whose duty it is to protect the rights of the legislative power against the executive government.<sup>36)</sup> This tribunate he compares with the Ephors of Sparta.

It is interesting to recall at this point the view of Calvin on the rôle of the inferior magistrates. His view coincides with both that of the Vindiciae and Rousseau. As shown before, Calvin writes as follows: "For if there are now any magistrates of the people, appointed to restrain the willfulness of kings (as in ancient times the ephors were set against the Spartan kings, or the tribunes of the people against the Roman Consuls, or the demarchs against the senate of the Athenians; and perhaps, as things now are, such power as the three estates exercise in every realm when they hold their chief assemblies), I am so far from forbidding them to withstand, in accordance with their duty, the fierce licentiousness of kings who violently fall upon and assault the lowly common folk, I declare that their dissimulation involves nefarious perfidy, because they dishonestly betray the freedom of the people, of which they know that they have been appointed protectors by God's ordinance".<sup>37)</sup>

It is clear that the magistratus inferiores stood between the ruler or government and the people to prevent the former from violating the rights of the latter. In Hobbes' theory of the absolute sovereign state, such a restraining institution has no place.

The.....135

36) Contrat social. (In Vaughan, vol.2, p.118.)

37) Institutes, iv. xx. 31.

The Vindiciae advocates intervention in no uncertain terms when a ruler openly and cruelly oppresses his subjects for religious or other reasons.<sup>38)</sup> Not only are neighbouring princes justified to intervene in such a case, but they will indeed neglect their duties if they do not intervene. Here we thus encounter the notion of justice as something universal to which all people are entitled. In his political writings which he had to leave incomplete, Rousseau never reached the stage where the relations between peoples would have been described. His Contrat social is only a fragment from a more comprehensive project on political institutions. In his edition of the writings of the Abbé St.Pierre, however, he subscribed to ideas similar to those expressed in the Vindiciae. In these writings a federation between peoples is advocated and one of the results that is envisaged of such a federation, is that the rulers of the people can only be protected against revolt of their subjects if the subjects are also in their turn safeguarded against tyranny on the part of their rulers. Law thus has to be maintained in all the states.<sup>39)</sup>

One should realize that in this regard the question of sovereignty is involved. The modern conception of sovereignty will never tolerate interference by a foreign state in the domestic affairs of a sovereign state. It must be remembered, however, that in the time of the Vindiciae, sovereignty did not have the same meaning as today. Its conception of sovereignty, in the sense of sovereignty of the people, did not mean absolute, arbitrary power to do anything whatsoever. Even the sovereign people had to recognize and submit to the superior authority of an immutable, reasonable and universal law. This

was.....136

38) Vindiciae, p.227.

39) Cf. Hendel: Op.cit., vol.1, p.213.

was also the position of Rousseau, although in his time absolute sovereignty was already a fact. No sovereign people was entitled to violate this law and should it do so, other peoples could interfere to establish sovereignty of law. The idea that sovereignty recognizes no law superior to itself, is modern and is not one that is held by either the Vindiciae or Rousseau.

Although the whole of the droit divin- theory was swept away in the period between the Vindiciae and Rousseau, the latter is nevertheless just as convinced as the Vindiciae that the body politic should have a religious basis. He realizes that the subjects have to subscribe to an agreed religious dogma so that they may feel morally obliged to obey the sovereign. At the same time he does not favour a religion in which an intolerant clerical class predominates. The religious convictions of the subject is no concern of the sovereign, but in so far as such convictions affect the interests of the people, they are subjects of public concern. It is absolutely necessary that subjects should have a religion which will encourage them to do their duty. For this reason Rousseau's civil religion only contains those dogmas which form a necessary basis to moral behaviour, i.e. the existence of an omnipotent, intelligent and benevolent God, the immortality of the soul, the happiness of the just and the punishment of the wicked and the sanctity of the social contract and the laws.

He could not tolerate the exclusiveness and intolerance of the churches of his time in his ideal community. Only conflict among citizens can result from such a state of affairs. The civil religion of Rousseau should not be regarded as a deification of the state, because he explicitly requires faith in the existence of God. It should only be regarded as an attempt to rid the community of religious intolerance and strife and to retain a

religious basis in society. The argument of the Vindiciae also advocates tolerance.

In the few preceding chapters we have attempted to show that Rousseau's political doctrine constitutes a distinct return to the position of the Vindiciae and that Hobbes' glorification of state absolutism seems to be a hideous aberration in the development of political thought, a break in the historical development of those principles of freedom and justice on which our Western tradition rightly prides itself.

Like the Vindiciae, Rousseau maintains the notion of reciprocal contract between sovereign and subject. Hobbes denies that the sovereign has any obligation towards his subjects. Both the Vindiciae and Rousseau recognize the people as a corporate body who creates its own laws and who is a subject of rights. Hobbes, on the other hand, regards the people as a multitude who has no coherence and cannot therefore be a corporate subject of rights. Only the monarch is a subject of rights and the sole law-maker in his state. Hobbes rejects the notion of sovereignty of law. His sovereign stands above the law and is the source of the law and all laws emanating from this source are legitimate whatever their content may be. The Vindiciae and Rousseau advocate sovereignty of law: only such laws are valid which have a just content and both the sovereign people and their government and rulers are subject to a moral and universal law which nobody may violate. Whereas Hobbes has no sympathy and place for corporations in his commonwealth, the Vindiciae defends the autonomy of corporations and peoples while Rousseau by his insistence on the desirability of a small city-state of which all the voters should be able to sit in the legislative assembly, can also be regarded as an advocate.....138



advocate of pluralism in stark opposition to the political monism of Hobbes. Diffusion and devolution of political power as envisaged by the doctrine of pluralism are always conducive to the freedom of the individual.

In Hobbes' commonwealth there is no effective safeguard against abuse of power by the monarch. Apart from the fact that he does not subscribe to the doctrine of sovereignty of law, he does not provide for an institution similar to Rousseau's tribunate and the magistratus inferiores of the Vindiciae who were entitled to restrain all forms of tyranny. Whereas Hobbes places the church firmly under the control of the monarch, both the Vindiciae and Rousseau breathe a spirit of tolerance. With them we find religion reconciled with politics, because they do not regard the state simply as a power instrument to be used even indiscriminately by Hobbes' sovereign to achieve his own ends, but as a means to obtain an ethical end, namely to enable individuals to lead a free and virtuous life and to achieve their true destiny as human beings.

CHAPTER 9.

THE POLITICAL DOCTRINE OF ALTHUSIUS.

We have shown that there is a great measure of agreement between the political principles of the Vindiciae and Rousseau in spite of the fact that a period of almost two hundred years during which the so-called "Natural Law" school of thought held sway, lies between them. We are thus faced with the problem of how these principles came to influence Rousseau.

It is true that Rousseau was born at Geneva and that he grew up in a Calvinistic tradition. It is also true that in the Contrat social,<sup>1)</sup> he went out of his way to pay tribute to Calvin's wisdom as a statesman, while in the dedication of the Discours sur l'inégalité he expressed genuine admiration for the constitution of the Republic of Geneva. All these references indicate Rousseau's links with Calvinism but cannot be accepted as a satisfactory explanation of Calvinistic influence on his political ideas, because the dominant feature of Calvinism, its religious doctrine, does not seem to have made a lasting impression on Rousseau.

I believe that the Politica methodice digesta of Johannes Althusius that was first published in 1603, provides an answer to our problem. To my mind this remarkable work is the link between Rousseau and the ideas of the Huguenot theorists of the sixteenth century and late medieval political concepts. As we have shown in Chapter 6, there is positive evidence that Rousseau was at least aware of the existence of Althusius which is quite remarkable because during the eighteenth century his name and reputation had already sunken into oblivion. As

Otto.....140

1) Vaughan: Op.cit., vol.2, p.52.

2)  
Otto von Gierke has pointed out, there is such a remarkable agreement between the Politica methodice digesta and the Contrat social, that, despite the fact that a strict proof can hardly be given, it is reasonable to accept that Rousseau actually read and made use of the book of Althusius. This assumption is strengthened by the fact that several of the fundamental ideas of Althusius' treatise which did not occur in such precise terms in any of Rousseau's predecessors are to be found in the Contrat social.

Another feature of Althusius' doctrine which contributes to the assumption that he, rather than Rousseau's early relations with Geneva, influenced the political thought of Rousseau, is that, in spite of its stern Calvinistic spirit, the treatise of Althusius shakes off<sup>3)</sup> the whole theocratic conception of the state which characterizes the politics of Calvin and his followers, the so-called Monarchomachi. In most other aspects, however, Althusius' thought resembles that of the Huguenot writers whose views he was the first to systematize.

The agreement of the political doctrine of Althusius with that of Rousseau will be evident if we consider the following brief summary of the main principles of his politics.<sup>4)</sup>

He maintains that the rights of sovereignty do not belong to a ruler but necessarily and exclusively to the social body of the people, or corpus symbioticum. These rights are indeed administered by a chief magistrate, but the ownership thereof belongs inseparably to the people as a whole and the people can no more renounce these rights and alienate them to another than a man can transfer his own life to another person. Necessity leads to  
the.....141

2) The development of political theory, tr. Bernard Freyd. Allen & Unwin, 1939. p.18.

3) Op.cit., p.71.

4) Ibid., chapter 2.

the association of individuals and the association itself is the product of a tacit or explicit contract. The parties to this contract become members of society or sympiotici. Althusius believed that he had found in the idea of living together the necessary condition of human existence. The efficient cause of all association and all government is the consent of all the associates and its final cause is the general welfare. He recognizes the existence of a number of spontaneous bodies which he calls consociatio publica particularis or local communities. He always derives the larger and higher associations from the smaller and lower and insists that this is the only method which corresponds to their natural and historical relation. The governing body of a local community is chosen by its members and is removable by them at any time. Like Rousseau's, his sovereignty is limited and the sovereign body is subject to God and the law. The authority of the executive officers is purely derivative. They have to recognize the people as their masters and serve them. He calls his state or republic a universalis publica consociatio and it consists of the cities and provinces which have agreed to unite and incorporate themselves into one body. He sees a microcosmos of the structure of the state in the nature of the communal association. As he regards the provincial community as a comprehensive religious, political, economic and social unit, it is clear that his conception of his universalis publica consociatio is definitely federal. Two types of officers are responsible for the administration namely the Ephors who are chosen by the whole people to exercise its rights as against the ruler who is the second type of officer, called the summus magistratus. The latter is the chief executive and is chosen on behalf of the people by the Ephors. However,

he is bound to the people by means of a reciprocal contract of government whereby a limited authority is delegated to him. He is thus more or less in the same position as Rousseau's government, while the Ephors coincide with Rousseau's tribunate.

Although Althusius describes a contract of government between the whole people and the Chief magistrate or ruler just as is done by the Vindiciae, he also acknowledges the possibility of a purely democratic form of state as envisaged by Rousseau. In such a case his 'chief magistracy' remains in the public assembly in which the people as a whole exercises the rights of sovereignty directly, while the governing officers are elected and changed from time to time and the representatives of the provinces, commune and other corporations play the part of Ephors.

6) From this short summary it is evident that there are even more points of agreement between Althusius and Rousseau than between the Vindiciae and Rousseau. Althusius' contract of association does not occur in the Vindiciae but is one of the main features of Rousseau's doctrine. Like Rousseau, Althusius also takes the individual as his point of departure for the formation of his consociatio publica particularis or local community. The Vindiciae, as we have seen, starts off with the people as a corporate body.

5) It has been pointed out by Vaughan that while Althusius contemplates a hierarchical political structure growing up spontaneously from the bottom where individuals associate to form simple corporations to the federal state which consists of various corporations at the top, Rousseau shows no signs of such a pluralistic set-up in his Contrat social and is rather advocating a unitary state. This objection must be rejected on the following

grounds.....143

grounds: Rousseau is only describing a small city-state and he is trying to find a sound basic formula which will obviate the necessity to transfer the sovereignty of the people to a ruler; furthermore his Contrat social only forms part of a larger project he had in mind, and judging by his allusions to federations, I would venture to suggest that if he had the opportunity to complete his treatise, it would have looked very much like that of Althusius. In the latter's consociatio universalis which, by the way, is very similar to the Vindiciae's commonwealth which consists of many peoples, each member retains its sovereignty (in its sixteenth century meaning) and under the terms of the contract of association is obligated only for mutual defence and submission to the court of arbitration.

Althusius' political doctrine may be regarded as a systematic attempt to establish a reconciliation between the large nation-states and the pluralistic principles of the late Middle Ages in order to save these principles from total eclipse. In the light of developments in the seventeenth and first half of the eighteenth century, this effort seemed to have been vain. But if it is true that Althusius influenced Rousseau, and we are convinced that it is true, then he did not write in vain.

As a result then of the points of agreement between Rousseau's political doctrine and that of Althusius and the Monarchomachi, one is justified, I think, to regard his thought as a return to the sound political principles of the late Middle Ages, viz. the people as a corporate body and subject of rights, the notion of a reciprocal contract, the people as the source of law, pluralism and sovereignty of law. His doctrine may also be regarded as an effort to redress the wrong turn that political thought has taken during the seventeenth century under the impetus of the champions of the absolute sovereign state<sup>of</sup> which Hobbes was the most prominent.

CHAPTER 10.

THE SIGNIFICANCE OF THE DOCTRINES OF  
HOBBES AND ROUSSEAU FOR OUR TIME.

Rousseau was, and remains, a controversial figure in the history of political thought. Many commentators regarded him as a protagonist of collectivism and despotism. In this spirit Sir Henry Maine attacked him for establishing a "collective despot" and for reintroducing, in the Contrat social, "the old divine right of kings in a new dress".<sup>1)</sup> Emile Faguet said that the Contrat social is antiliberal and that Rousseau's political thought contains "not an atom of liberty or sovereignty".<sup>2)</sup> Taine argued that Rousseau's political theory had been designed as the supreme assault<sup>CA</sup> on law and the state and had resulted, paradoxically but inevitably, in tyranny: "The doctrine of popular sovereignty, interpreted by the masses, will produce perfect anarchy until the moment when, interpreted by the rulers, it will produce perfect despotism".<sup>3)</sup> Rousseau's state, as he put it, is a "layman's monastery", and "in this democratic monastery which Rousseau establishes on the model of Sparta and Rome, the individual is nothing and the state everything".<sup>4)</sup> Sir Ernest Barker also came to the conclusion that "in effect, and in the last resort, Rousseau is a totalitarian...Imagine Rousseau a perfect democrat: his perfect democracy is still a multiple autocracy".<sup>5)</sup>

These are just a few examples to show that this view has become very prominent in the literature on Rousseau. This view is, however, absolutely wrong. It

results.....145

1) Popular government. New York, Holt, 1886. pp.157, 160.

2) Dix-huitième siècle. 43d ed. p.345.

3) L'Ancien Régime. Paris, Hachette, 1896. p.319.

4) Ibid., pp.323, 321.

5) Introduction to The Social Contract. New York, O.U.P., 1948. p.xxxviii.

results, firstly, from a failure on the part of the commentators to consider all Rousseau's writings as a whole. Secondly the fact is ignored that Rousseau is dealing in his two discourses with the political and social conditions of his time, while in his Contrat social he attempts to describe the essential features of an ideal state which should take the place of the one he rejects. In the third place, it is often forgotten that Rousseau's ideal state is not a modern nation-state, but a small city-state. From such units he apparently thought that a larger confederation may be formed, but, unfortunately, he did not work out this aspect of his politics.

All these authors seem to think that Rousseau sacrifices the individual to an absolute state authority. What usually brings them to this view is "l'alienation totale de chaque associé avec tous ses droits à toute la communauté"<sup>6)</sup>. This, they allege, means that the individual surrenders himself unconditionally to, and is absorbed by, the state. Such an interpretation may have been true if the state is something alien, and perhaps even hostile, to the individuals. Individuals voluntarily join the community in which each of them, far from abandoning his freedom, continues to exercise it as a constituent member of the sovereign assembly. The total alienation is necessary, because men are living in an unjust and despotic society and have to make a clean start in a just community. Ernst Cassirer puts it like this: "The state claims the individual completely and without reservations. However, in doing so it does not act as a coercive institution but only puts the individual under an obligation which he himself recognizes as valid and necessary, and to which he therefore assents for its sake.....146

6) Contrat social. (In Vaughan, vol.2, p.33.)



sake as well as for his own"<sup>7)</sup>. Far from being an assault on law and the state, as Taine asserted, Rousseau's political theory, according to Cassirer, has as its essential purpose "to place the individual under a law that is universally binding, but this law is to be shaped in such a manner that every shadow of caprice and arbitrariness disappears from it"<sup>8)</sup>.

These authors also forget that Rousseau's popular sovereign, the community as a whole, is not absolute and above the law in the same sense as Hobbes' sovereign. Men, both in their individual capacity as subjects, and in their communal capacity as participants in the sovereign assembly, remain under the authority of a supreme law. "The law", Cassirer says, "as such possesses not limited but absolute power; it commands and demands unconditionally. It is this spirit which underlies the design of the Contrat social and shapes its every detail"<sup>9)</sup>.

The best answer that one may thus give to those who accused Rousseau of despotism and totalitarianism is that they mistook Rousseau's strict adherence to absolute sovereignty of law for absolute sovereignty of some or other human beings or rulers who are above the law.

The same argument may be used against people who protest against the so-called tyranny of the majority. According to Rousseau both minority and majority are subject to the same universal law and tyranny is thus ruled out.

Instead of totalitarianism, Rousseau could rather be accused of favouring the individual. "The problem for him", writes Frederick Watkins<sup>10)</sup>, "was to find<sup>a</sup> society in which the group could act without frustrating the will of any individual". As Watkins also points out the idea that.....147

- 7) The Question of Jean-Jacques Rousseau. p.55.  
8) Ibid., p.62.  
9) Ibid., p.97.  
10) The political tradition of the West. Harvard univ. press, 1948. p.97.

that Rousseau favoured totalitarianism is based on the rôle of the legislator in the Contrat social. "He seized upon it", Watkins says, "as the only possible answer to the difficulty in which he, like the totalitarians of our day, had been placed by reason of his doubts as to the political capacity of ordinary men"<sup>11)</sup>. This opinion may be true, still it has to be borne in mind that the rôle of the legislator as conceived by Rousseau is merely advisory, never coercive. "He, therefore, who draws up the laws has, or should have, no right of legislation, and the people cannot, even if it wishes, deprive itself of this incommunicable right, because, according to the fundamental compact, only the general will can bind the individuals, and there can be no assurance that a particular will is in conformity with the general will, until it has been put to the free vote of the people"<sup>12)</sup>.

All the suggestions that the legislator may make is thus subject to the approval of the majority of the people. He is merely helping the people to see clearly what their general interests are. How anyone can attribute to this person the absolute coercive powers of a modern dictator is beyond my comprehension.

Our objections against the view that Rousseau was a protagonist of collectivism and despotism may perhaps further be elucidated by examining a similar interpretation of Rousseau's doctrine which was published recently.<sup>13)</sup> "Although Rousseau explicitly opposed despots and aggressive wars", they say, "his idea of the general will was particularly suited to be exploited by tyrants"<sup>14)</sup>.

By making such an assertion, they obviously forget that Rousseau rejects the idea of representation unconditionally. Now, as nobody is allowed to represent the people.....148

11) Ibid., p.109.

12) Contrat social. ii, vii.

13) J.Bronowski and Bruce Mazlish: The Western intellectual tradition. London, Hutchinson, 1960. pp.300-303.

14) Ibid., p.300.

people, it is very difficult to see how anybody can, theoretically, usurp the sovereignty of the people and proclaim his own will as the general will. If we follow the text of Rousseau's political writings closely, we find no opportunity for the emergence of a tyrant.

The next complaint of the authors against Rousseau is that he allows for no partial associations in the body politic. Because of this, they say, "there is to be no intermediary barrier between the citizen and the force of the state"<sup>15)</sup>. Rousseau, according to them, tolerates no political parties. It is difficult to establish in what sense they use "state" here. If they use it in the sense of government, their statement is clearly wrong, because then one can say that in Rousseau's political theory the whole sovereign body politic stands between the individual and the executive government. If, however, they use "state" in the sense of the sovereign legislative body, then their statement is true, but in this case it must be pointed out that Rousseau envisaged such a small community that everybody may directly participate in the activities of the legislative assembly. It is only in a monarchy or aristocracy that intermediary barriers between the individual and the state have any use. The authors are quite wrong when they state that by the prohibition of political parties, Rousseau isolates the individual from his neighbours.

"The totalitarian implication" of Rousseau's view, the authors say, "is mitigated only if the general will is arrived at by counting votes". This, however, they say, is not the case and to prove this assertion they refer to a paragraph in Rousseau's Discourse on political economy.<sup>16)</sup> They neglect to state that this Discours does not.....149

15) Ibid., p.301.

16) Vaughan: Op.cit., vol.1, p.247.

not contain Rousseau's final thoughts on political philosophy and studiously avoid any reference to the Contrat social where Rousseau explicitly states that the general will resides in the majority.<sup>17)</sup> If they had also referred to the Discours on political economy before they complained about the absence of partial associations in Rousseau's political theory, they would have seen these bodies are allowed there.<sup>18)</sup> So it seems that these authors only selected bits and pieces from Rousseau's writings which suited their allegation of totalitarianism and ignored other passages which did not suit them.

These authors, as most other commentators who share their view, base their unfavourable interpretation of Rousseau mainly on the absence of intermediary bodies in Rousseau's state and on their allegation that the idea of the general will lends itself to tyranny because it is not established by a majority. The latter allegation is clearly false and the absence of intermediary bodies carries no great weight in view of Rousseau's insistence on a small community and his rejection of representation.

We concede that it may perhaps be argued that some of Rousseau's successors used some of his ideas to justify totalitarianism. In this respect, however, one should remember Bosanquet's warning: "The popular rendering of a great man's views is singularly liable to run straight into the pit-falls against which he more particularly warned the world".<sup>19)</sup>

As we have seen when we discussed the doctrines of both Hobbes and Rousseau, the validity of a political theory depends almost exclusively on the theorist's conception of the nature of man. We have seen that Hobbes' conception of man may be called atomistic individualism. Every individual is conceived as being self-sufficient, egoistic.....150

17) Ibid., vol.2, p.105.

18) Ibid., vol.1, pp.242-3.

19) The philosophical theory of the state. London, Mac-Millan, 1920. 3rd ed. p.13.

egoistic and independent. For this reason Hobbes thought that the mathematical method can suitably be applied to a study of human relations. Rousseau, although he admitted that compassion is an innate quality of man, was not able to free himself entirely from the atomistic conception. As Bosanquet pointed out<sup>20)</sup> Rousseau's true meaning is often obscured by defective terminology. This observation explains the traces of atomistic individualism implied by Rousseau's rendering of the social contract and the alienation of all the individual's rights and property to the community, as if the individual can have any rights and freedom apart from the community. True right only begins with that social unity "by which a people is a people". However, it is hardly fair to blame Rousseau for this slip, because since the time of Hobbes all the main political theorists have based their theories on the assumption of the existence of pre-social individual rights.

In chapter 8 we have shown that both the Vindiciae and Rousseau advocated the idea that a people can be a persona moralis and a subject of rights without the help, or rather coercion, of a ruler. We also saw that a people is capable of creating its own laws and that it is able to recognize and obey a supreme law which is both rational and universal.

These ideas are based on a conception of the nature of man which differs fundamentally from that of Hobbes. The human individual is not exactly born with a natural inclination towards society, but he has nevertheless the capacity to realize that he can only fulfill his destiny in society. This view is confirmed by what follows below.

One of the most satisfactory interpretations of  
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20) Ibid., p.87.

the political philosophy of Rousseau that I came across is undoubtedly that of Bosanquet. Looking for a solution to the paradox of self-government, he shows that the theories of Bentham, Mill and Spencer are based on the assumption of atomistic individualism. According to them individuals are self-complete, self-satisfied and self-willed.<sup>21)</sup>

Bosanquet goes on to discuss two statements of Rousseau which, on a superficial view, appear to be contradictory. The first one is that the individual can be forced to be free. This can be explained "if", as Bosanquet puts it, "instead of the absolute and naturally independent existence of the physical individual, the social person is taken as reality, it follows that force against the physical individual may become a condition of freedom".<sup>22)</sup> We shall return to this statement. The second contradictory passage in Rousseau is that "man is born free but everywhere he is in chains". In this case I can agree with Bosanquet that the first part of the passage should be understood as man is born for the truest freedom which he attains by subservience to social law.<sup>23)</sup> I cannot, however, agree with him that "but everywhere he is in chains" is necessarily incompatible with his interpretation of the first part. As I see it, the last part of Rousseau's famous passage simply refers to political conditions of his day. Rousseau asks himself: "What happened to the freedom for which man was born?" He sees no evidence of this freedom around him, only chains.

Dealing with Rousseau's notion of the general will, Bosanquet remarks that the general will "in its idea, as the key to the whole problem of self-government and freedom under law, is that identity between my particular will and the wills of all my associates in the body politic

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21) Op.cit., pp.75-76.

22) Op.cit., p.90.

23) Op.cit., p.93.

which makes it possible to say that in all social co-operation, and in submitting even to forcible constraint, when imposed by society in the true common interest, I am obeying only myself, and am actually attaining my freedom... The General Will seems to be... the ineradicable impulse of an intelligent being to a good extending beyond itself, in as far as that good takes the form of a common good".

As soon as the average individual who sees nothing in life but his own private interest, is no longer accepted as the real self or individuality, we can regard the problem of self-government from a point of view that does not represent it as a contradictio in termini.

Freedom, Bosanquet asserts, "is the condition of being ourselves. To be ourselves we must be always becoming something which we are not. Liberty must be a condition revelant to our continued struggle to assert the control of something in us, which we recognise as imperative upon us or as our real self, but which we only obey in an imperfect way. This is the meaning of to be forced to be free".

In short Bosanquet conceives man as a being who can only realize his own true self, and can thus only be really free, in a community where he feels himself at home and where in co-operation with his fellow-citizens, he can work for the common good. This is the idea which Rousseau attempted to express in his political writings, and in this respect his political doctrine clearly departs from the theories based on atomistic individualism which held sway for about a century at the time when his writings appeared and which are still with us in many shapes and forms.

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- 24) Op.cit., p.100.
- 25) Op.cit., p.102.
- 26) Op.cit., p.117.

Rousseau can thus rightly be regarded as a return to Aristotle and Plato who regarded society as "a living and growing creature in which man's nature expands from more to more, having its own essence progressively communicated to it".<sup>27)</sup>

In the light of Bosanquet's conception of the nature of man, one can state that all the theorists, of whom Hobbes is the foremost, who based their political theories on a conception of man as a self-sufficient entity, built on false foundations. In this opinion one is strongly supported by Martin Buber's thoughts on the nature of man. In an essay, "What is man",<sup>28)</sup> this contemporary philosopher, one of the keenest intellects of our age, brilliantly reviews the progress of philosophical anthropology from Aristotle to Max Scheler and Heidegger..

He points out that the strict anthropological question becomes insistent in times when the original contract between the universe and man is dissolved and man finds himself a stranger and solitary in the world. This was the very state of affairs against which the Vindiciae was written in an attempt to restore and maintain the social conditions under which man could feel at home in the world. Such a period occurred after the scientific discoveries of Galileo, Copernicus and Kepler. The solitude and anguish of man faced with infinite space, was admirably expressed by the sensitive Pascal who acutely experienced the full impact of the new view of the cosmos. "L'homme n'est qu'un roseau, le plus faible de la nature: mais c'est un roseau pensant. Il ne faut pas que l'univers entier s'arme pour l'écraser: une vapeur, une goutte d'eau, suffit pour le tuer. Mais, quand l'univers l'écraserait, l'homme serait encore plus noble que ce qui

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27) Bosanquet: Op.cit., p.122.

28) Between man and man. Collins.1961. ch.v.



le tue, parce qu'il soit qu'il meurt et l'avantage que  
l'univers a sur lui. L'univers n'en sait rien".<sup>29)</sup>

To this feeling of insecurity and anguish Kant, according to Buber, replied that the terrifying mystery of the world's space and time, is the mystery of man's own comprehension of the world and thus ultimately the mystery of man's own being. An adequate expression of the nature of man, we find in Feuerbach's Principles of the Philosophy of the future (1843) where he writes:

"The individual man for himself does not have man's being in himself, either as a moral being or a thinking being. Man's being is contained only in community, in the unity of man with man - a unity which rests, however, only on the reality of the difference between I and Thou".<sup>30)</sup> Unfortunately Feuerbach never elaborated these remarks. Marx did not seem to comprehend the real significance of Feuerbach's words and opposed an unreal individualism with an equally unreal collectivism. No progress was made in this respect by Nietzsche who regarded man as an animal that has grown out and stepped forth from the animal world. He did not see man as a being in himself, but at best as a preliminary form of being, as the animal that is not yet established.

Buber points out how the old organic forms of the direct life of man with man - the communities which were not too big to allow the men who are connected by them to be brought together ever anew and in which men understand their membership as their destiny and as a vital tradition - were decaying more and more. These organic forms of community offered to man a sociological security which preserved him from the feeling of being completely exposed. New community forms such as the club, the trade union and the party have not been able to re-establish

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29) Quoted by Buber: Op.cit., p.164.

30) Quoted by Buber: Op.cit., pp.181-182.

the security that has been destroyed.

Husserl, the father of the phenomenological school, also made a few remarks which he did not develop, but which seem to indicate that man's essence is not to be found in isolated individuals, for a human being's bonds with his generation and his society are his essence.

Comparing Kierkegaard and Heidegger, Buber says: "The relation to individual men is a doubtful thing to Kierkegaard, because in his view an essential relation to God is obstructed by an essential relation to human companions. In Heidegger the relation to individual men appears only as a relation of solicitude. A relation of mere solicitude cannot be essential...An essential relation to individual men can only be a direct relation from life to life in which man's reserve is resolved and the barriers of his self-being are breached"<sup>31)</sup>.

Discussing Sigmund Freud's influence on Scheler, Buber points out that although the psychological categories of Freud have general validity, this validity is not based on the general life of man, but on the pathological condition of the typical man of to-day. The object of Freud's psychology and Scheler's anthropology is the sick man cut off from the world and divided into spirit and instincts. This man is not the normal man. Despite the efforts of various contemporary philosophers the problem of man remains unresolved. "Individualism understands only a part of man, while collectivism understands man only as a part: neither advances to the wholeness of man, to man as a whole. Individualism sees man only in relation to himself, but collectivism does not see man at all, it sees only "society". With the former man's face is distorted, with the latter it is masked... The human person feels himself exposed by nature - as an unwanted child is exposed - and at the same time.....156

31) Op.cit., p.216.

time a person isolated in the midst of the tumultuous human world. The first reaction of the spirit to the awareness of this new and uncanny position is modern individualism, the second is modern collectivism... To save himself from the despair with which his solitary state threatens him, man resorts to the expedient of glorifying it... The second reaction, collectivism, essentially follows upon the foundering of the first. Here the human being tries to escape his destiny of solitude by becoming completely embedded in one of the massive modern group formations...and let one's own responsibility for an existence which has become all too complicated be absorbed in collective responsibility..."<sup>32)</sup>

This absorption of the individual in a collectivity does not result in communion of man with man. Man's isolation is not overcome, but merely overpowered and numbed. In collectivism the person surrenders himself when he renounces his responsibility and he is thus unable to break through<sup>to</sup>/the other, for a genuine relation is only possible between genuine persons.

Finally Buber comes to the following conclusion: "The fundamental fact of human existence is neither the individual as such, nor the aggregate as such. Each, considered by itself, is a mighty abstraction. The individual is a fact of existence in so far as he steps into a living relation with other individuals. The aggregate is a fact of existence in so far as it is built up of living units of relation. The fundamental fact of human existence is man with man"<sup>33)</sup>

Just as Bosanquet, but in even clearer terms, Buber rejects the old notion that there exists an essential antithesis between the individual and society. In

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32) Op.cit., pp.241-2.

33) Op.cit., p.244.

actual fact the one cannot be conceived without the other. Not in isolation and solitude, but only in communion with other men can man be his real self. The Vindiciae never contemplated the possibility of a conflict between individual and society. The individual formed so much a part of the community and felt himself so much at home in the community that no antithesis between individual and community could be envisaged.

We also see how much Rousseau anticipated in his political philosophy the contemporary conception of man. He certainly had an instinctive insight into the true nature of man. His merit in this respect can only be seen in its correct perspective when one bears in mind that for a century before and after him, even up to our day, numerous thinkers and politicians have based their systems on the premise of individualism - a premise which reached its dominance in political theory as a result of the false assumption that the methods of natural science are applicable to a study of human affairs.

José Ortega y Gasset described this futile attempt to resolve human affairs in terms of natural science brilliantly in the following words: "When naturalist reason studies man it seeks, in consistence with itself, to reveal his nature. It observes that man has a body, which is a thing, and hastens to submit it to physics; and since his body is also an organism, it hands it over to biology. It observes further that in man as in animals there functions a certain mechanism incorporeally, confusedly attached to the body, the psychic mechanism, which is also a thing, and entrusts its study to psychology, a natural science. But the fact is that this has been going on for three hundred years and that all the naturalist studies on man's body and soul put together have not been of the slightest use in throwing light on any of our most

strictly human feelings, on what each individual calls his own life, that life which, intermingling with others, forms societies, that in their turn, persisting, make up human destiny. The prodigious achievement of natural science in the direction of the knowledge of things contrasts brutally with the collapse of this same natural science when faced with the strictly human element. The human element escapes physico-mathematical reason as water runs from a sieve".<sup>34)</sup>

Many other writers have also stressed the sense of solitude and anxiety experienced by man on the advent of the individualistic society. So Erich Fromm writes "that modern man, freed from the bond of pre-individualistic society, which simultaneously gave him security and limited him, has gained not freedom in the positive sense of the realization of his individual self; that is, the expression of his intellectual, emotional and sensuous potentialities. Freedom, though it has brought him independence and rationality, has made him isolated,<sup>and</sup> thereby,<sup>35)</sup> anxious and powerless".

Similarly Lewis Mumford, a sincere student not only of architecture but also of general culture, remarks: "Freed from his sense of dependence upon corporation and neighbourhood, the 'emancipated individual' was dissociated and delocalized: an atom of power, ruthlessly seeking whatever power can command".<sup>36)</sup>

On the nature of man the Italian philosopher, Giovanni Gentile expresses the following view: "The human individual is not an atom. Immanent in the concept of an individual is the concept of society. For there is no ego, no real individual, who does not have within him (rather than just with him) an alter who is his essential socius.....159

- 34) History as a system. New York, Norton, (1961). pp.184-185.  
35) The Fear of freedom. London, Kegan Paul, 1942. p.x  
36) The City in history. London, Secker and Warburg, 1961. p.366.

socius - that is to say, an object that is not a mere 'thing' opposed to him as subject, but a subject like himself".<sup>37)</sup>

It is thus clear that Buber and Bosanquet are not alone in their interpretation of the nature of man and in their estimation of the predicament of modern man.

The question now arises: what can be done in the field of political theory to alleviate this predicament of man? An attempt in this direction has been made by H. Krabbe who in his "The modern idea of the state" worked out a new basis for authority in society. Krabbe holds the view that in any political society only the impersonal authority of law should be recognized as the ruling power. He rejects the idea that law is the creation of a sovereign who stands above the law and above the community for which the law is to be binding. He contends that the source of all law can only be found in the spiritual life of a community and specifically in its feeling or sense of right. The sovereignty which, according to Krabbe, used to be regarded as the source of law, he describes as an independently valid right to command. He rejects the idea of sovereignty when it is employed in the sense in which Hobbes used it, namely as an absolute, supreme legislative authority elevated above the people and having no obligations toward them.

<sup>As</sup>  
As Krabbe believes that law originates from the sense of right of a community for which that law is to be binding, and as he regards it as imperative that all members of the community should participate in the creation of the sense of right, he definitely favours decentralization of law-making. Not only will it be easier for a smaller community to achieve unanimity than a bigger one, but there will also be a smaller variety of interests to

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37) Genesis and structure of society. University of Illinois press, 1960. p.98.

be catered for in a smaller community. To arrive at a true sense of right, the ideal is that all members of the community should be well acquainted with the issues to be decided. Individuals cannot exercise their sense of right in connection with subjects of which they have no knowledge.

Such a conception of law can of course be accused of subjectivity and relativity. This objection Krabbe attempts to meet by declaring that, provided that disturbances of the sense of right can be eliminated, this sense will be the same in every one.

"A state which includes many races or nationalities", Krabbe writes, "can be held together only by reducing central law-making to a minimum".<sup>38)</sup>

Krabbe's doctrine can be summarized as follows: he replaces the idea of an absolute sovereign standing above and outside the community to whom it hands down laws arbitrarily, by the idea of the sovereignty of law and this law originates from the sense of right of the people who has to obey this law. In order that the sense of right may emerge more easily and clearly, he favours decentralization of law-making.

Now, I am not convinced that Krabbe's modern idea of the state is as modern or original as he seems to think. Despite its contract of government and recognition of a monarch, the Vindiciae has much in common with Krabbe's idea of the state. The Vindiciae also did not recognize an absolute sovereign standing above and outside the community for whom it makes the laws. No, the community creates its own laws and the king has to promise that he will govern the people according to their laws. These laws also originate, as Krabbe says, from the community's sense of right. The Vindiciae further concedes that a commonwealth.....161

38) The modern idea of the state. Tr.G.H.Sabine and W.J. Shephard, The Hague, Nyhoff, 1922. p.210.

commonwealth may consist of many peoples each of whom has its own laws. The principle of pluralism is thus also maintained by the Vindiciae. As the law binds both the people and the ruler and furthermore its validity depends on the justness of its content, we can say that the Vindiciae is even more concerned with sovereignty of law than Krabbe.

The same holds good for Althusius. Krabbe acknowledges that Althusius has much in common with his own doctrine, but the contract with the sovereign and the social contract that feature in Althusius' doctrine do not meet with his approval. Such formalities which only reflect the general political terminology of the time, should, however, not blind us to the important fact that Althusius consciously propagates sovereignty of law and that he consistently locates the origin of law in the spiritual life of the small community. In other words, he is definitely in favour of pluralism.

As far as Rousseau is concerned, Krabbe makes the following remarks: "If Rousseau's political theory had been regarded only in the light of its main principles and had not been <sup>criticized</sup> ~~criticized~~ exclusively with reference to what he borrowed from earlier theories, viz., the explanation of the community and the establishment of its sovereign by the social contract, there might have been seen in it, what it doubtless contains, the modern idea of the state".<sup>39)</sup> In short, Rousseau, despite his retention of concepts which were not really essential to his idea of the state, nevertheless recognized the community as the source of its own law and the sovereignty of this law in the community. When Krabbe thus states that Rousseau confused the authority of the law with that of the sovereign<sup>40)</sup> he neglects to remember that Rousseau's notion

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39) Op.cit., p.29.

40) Op.cit., pp.30-31.



of the sovereign is totally different from his own. Rousseau's sovereign is not an absolute personal ruler who dominates his subjects, but his sovereign is the community itself. Moreover, when Krabbe states that "the sole rulership of the law emerges only where law-making rests exclusively in the hands of the popular assembly, since the popular assembly gets its significance from what it represents, viz., the nation's sense of right,"<sup>41)</sup> we can almost mistake his voice for that of Rousseau. And so we come to the conclusion that Krabbe's modern idea of the state is in its essential characteristics similar to Rousseau's political doctrine.

A much more forcible statement of political pluralism we find in the writings of John Neville Figgis. His position has been summarized as follows: "Man, whose personality is social, develops that personality in numerous groups that cannot be said to be derived from the state and yet are obviously not private. Either we must widen our notion of those things that are public, so as to include those groups other than the state or we must invent a new category for such associations. Figgis does the former by recognizing the real personality of those groups".<sup>42)</sup>

If we interpret Rousseau's formula for the establishment of a model state as expounded in his Contrat social, as that of a primary corporation, association or group which will form autonomous units in a larger federal set-up, it must be acknowledged that he has much in common with a writer like Figgis. Rousseau's real significance for our time can thus be stated as follows: man can only feel himself at home and can only exploit all his potentialities.....163

41) Op.cit., p.34.

42) H.M. Magid: English political pluralism. Columbia univ. press, 1941. p.16.

potentialities in a community which is not too big for him to comprehend so that he can partake in its political life in an intelligent manner. As the capacity of the average human individual is limited, the effective participation of the individual in law-making can only be achieved by recognizing the legitimate existence of such groups in society and by allowing them to run their own affairs as far as possible. In other words, devolution or decentralization of law-making should be allowed.

It is precisely the disappearance of many of these autonomous groups which grew up spontaneously among men which F.A. Hayek bewails when he writes: "No longer is the individual generally the member of some small community with which he is intimately concerned and closely acquainted. While this has brought him some increase in independence, it also deprived him of the security which the personal ties and the friendly interest of the neighbours provided...In order to be effective, then, responsibility must be so confined as to enable the individual to rely on his own concrete knowledge in deciding on the importance of the different tasks, to apply his moral principles to circumstances he knows, and to help to mitigate evils voluntarily".<sup>43)</sup>

In the light of contemporary political thought and the conception of human nature as developed by Buber, one is justified, in our opinion, to state that Rousseau's political theory implies pluralism and sovereignty of law as the main safeguards for true individual liberty and happiness in our time.

In opposition to this view, we still find today a strong current of atomistic liberalism which originated from the philosophy of Hobbes. Atomistic liberalism is based on the premise that there exists an inevitable and

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43) The constitution of liberty. London, Routledge, 1960. p. 83.

necessary antithesis between the individual and the community. Typical of this view is the following: (Liberalism) "sought to vindicate the right of the individual to shape his own destiny, regardless of any authority which might seek to limit his possibilities; yet it found that, inherent in that claim, there was an inevitable challenge<sup>44)</sup> from the community to the sovereignty of the individual".<sup>45)</sup> Professor J.S. Schapiro describes the fundamental postulate of liberalism inter alia as follows: "Every individual is therefore to be treated as an end in himself, not as a means to advance the interests of others".

These statements contain clear echoes of Hobbes' original doctrine although the writers concerned may not be aware of it. Hobbes consciously rejected history and paid no attention to the spontaneous and natural forms of community life as it developed through the ages. In order to apply the mathematical method, of which he became enamoured, to human beings, he had to reduce the dynamic, living human being to the level of single, independent atoms of matter which are always in motion. In his state there is no place for the historical community which had its own character and rights.

Hobbes had the honesty to follow the implications of his view of the nature of man to their logical conclusions. His individuals are egoistic, self-sufficient and equal. In the state of nature each individual is indeed sovereign as Laski said above. Individuals thus have no inherent coherence with their fellow-men; they can never form a closely-knit community and consequently only the fear of the power of an absolute ruler can keep them from flying at each other's throats. Coercion is thus necessary for the maintenance of law and order. Man as

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44) H.J. Laski: The rise of European liberalism. London, Allen & Unwin, (1936) p.14.

45) Liberalism. Princeton, Van Nostrand, (1958.) p.9.

conceived by Hobbes is devoid of all sense of ethical imperative or norms. Each man is a law unto himself as long as he is in the state of nature, and in the civil state the ruler decides about right and wrong. There is no place for a truly rational sovereign law which will be obeyed and respected by both subjects and monarch in Hobbes' state. These are some of the logical consequences of Hobbes' point of view, but the contemporary protagonists of atomistic liberalism are not prepared to face them as Hobbes did.

The practical implications of Hobbes' view of man and of any application of mathematical method to human affairs, can most clearly be seen today under the communist regime. There we find the same concentration of all power, legislative, executive and judicial in the hands of an absolute dictator. Under this supreme authority we do not find the people as a corporate body and subject of rights, but only isolated individuals. As no spontaneous groups are allowed to grow up in the state in a natural way, the individual is exposed to the full force of the supreme authority. Such intermediary bodies as are allowed in the body politic are instruments of the central authority superimposed upon the people to ensure efficient control by the central government. The subjects of the state are kept under the influence of subtle psychological propaganda, or, if necessary are coerced by physical force, in order that they should submit to the desires of the state as personified by the dictator. Men are dealt with as if they are things and no thought is given to the so-called dignity and sovereignty of the individual.

Even in non-communist countries with a capitalistic society where great scope is left to the profit motive,

the temptation is great to treat human beings as mechanical units of production, instead of human beings with reason, feelings and moral sense.

This is what happens to man if he is conceived as an atomistic individual. Such a view of man militates against his human dignity and if one says that human dignity is to be respected, one cannot at the same time profess an atomistic view of man. It should be recognized, as the Vindiciae, Rousseau, Bosanquet and Buber did, that man can only be regarded as a human being in the full sense of the word, if he is regarded as a member of a community, for only there can he exercise and develop those virtues and values which distinguish man from animal. Similarly man is capable of associating and co-operating with other men in an orderly and harmonious way. Man is capable of acknowledging an ethical and rational law which he should observe in his dealings with other men. Man is not naturally so egoistic and selfish that he is unable to consider the interests and feelings of others, or that he is unable to work in association with other men for a common purpose.

If we ignore these essential characteristics of human nature in our civil institutions, we shall not be able to ensure durable peace and security as Hobbes thought. Only suffering, unhappiness and revolt will result. Only an intimate society into which man enters of his own free will and in which he can exercise his talents in the service of the community without losing his identity, will endure. In such a community a moral, rational and universal law which all recognize as necessary, will be sovereign.

One often hears the remark that such a small political unit as Rousseau envisaged in his city-state is

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impracticable under contemporary economic conditions. To this one can reply by pointing out the example of Switzerland where the cantons and village communities enjoy a large measure of local autonomy. Furthermore, the ideal state described in the Contrat social cannot be realized in practice without adjustments. The ideal state is only a model toward which the body politic should strive. But it is patently wrong to assume that small autonomous political units are incompatible with economic and military co-operation, provided that such co-operation is based on the free consent of each of these units.

The fundamental principles enunciated by the Vindiciae and Rousseau are still valid to-day because they are based on universal and eternal values. Politics should always rest on a moral base and should subscribe to a universal, rational law and should not be based on the mechanical and impersonal methods of physical science which deny the ethical nature and dignity of man.

The Hobbesian approach may lead to more efficiency in the short run, but must fail in the end, because it ignores the humanity of man.

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